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STATE OF CALIFORNIA
INTEGRATED WASTE MANAGEMENT BOARD
RIGID PLASTIC PACKAGING CONTAINER INFORMAL RULEMAKING
PROCESS ADVISORY GROUP

JOE SERNA, JR., CAL/EPA BUILDING
1001 I STREET
SIERRA HEARING ROOM
SACRAMENTO, CALIFORNIA

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Ms. Michelle Marlowe, Staff

Mr. John Nuffer, Board Advisor

Mr. Bill Orr, Branch Manager, Recycling Technologies

Mr. Ted Rauh, Program Director

Mr. Brian Stalker, Staff

ALSO PRESENT

Mr. Steve Alexander, Association of Postconsumer Plastic
Recyclers, telephonic

Mr. George Larson, Illinois Tool Works and America
Chemistry Counsel

APPEARANCES CONTINUED

ALSO PRESENT

Ms. Carol Livingston, Soap Detergent Association

Mr. Jack Mcaneny, Proctor & Gamble Company, telephonic

Ms. Patty Moore, PRCC, telephonic

Mr. Howie Norton

Mr. Bill O'Grady, Talco Plastics, Inc., telephonic

Mr. Randy Pollack, Law Offices of Randy Pollack

Ms. Laura Roul, Meadwest Baco, telephonic

Ms. Marcie Wrecker, EPI

Mr. Parham Yedidsion, Envision Plastics, telephonic

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1 PROCEEDINGS

2 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

3 LEAON: Good morning. I'm Mike Leon with the California
4 Integrated Waste Management Board, Plastics Recycling
5 Technology Section. I'd like to convene our meeting. And
6 today is the workshop on the Rigid Plastic Packaging
7 Container RPPC rulemaking.

8 And I also have a couple of housekeeping
9 announcements for the meeting. And I'm required to read
10 evacuation information. Please look around you now and
11 identify two exits closest to you. In some cases, an exit
12 may be behind you.

13 In the event of a fire alarm, we are required to
14 evacuate this room immediately. Please take your
15 valuables with you and do not use the elevator. Staff
16 will assist you to the nearest exit. You should know you
17 may find an exit door by following the ceiling mounted
18 exit signs. Evacuees will exit down the stairways and
19 possibly to a relocation site across the street. If you
20 cannot use the stairs, you will be directed to a
21 protective vestibule inside a stairwell.

22 Should we have to relocate out of the building,
23 please obey all traffic signals and exercise caution while
24 crossing the street. We have had fire alarms during
25 meetings. I don't anticipate that happening today. If it

1 should, we will reconvene the meeting as soon as we are
2 given notice that the building is clear for us to return.
3 Typically, that may mean as much as a half-hour to 45
4 minute delay if we actually have to evacuate the building.

5 Okay. Couple other housekeeping announcements.
6 We do have a court reporter here today. So I must ask
7 people in the room if you have a comment to please use the
8 microphone. We have a hand-free microphone we'll pass
9 around the room. That will also assist our folks that are
10 participating by telephone to hear your comments and
11 questions.

12 In addition for you folks on the telephone,
13 again, since we have the court reporter here today, it's
14 going to be very helpful for us if you can put your phone
15 on mute until such a time as you have a comment or a
16 question, as we often pick up background noise. And we
17 are hearing some background noise now. So again, if
18 you're on the phone, please put your phone on mute until
19 you have a question or comment that you'd like to pose.

20 Okay. I think at this point we'll do
21 introductions. If we could start inside the room, let's
22 go around the room and do introductions so the folks on
23 the phone can know who is participating in the meeting
24 today.

25 MS. MARLOW: Michelle Marlowe, California

1 Integrated Waste Management Board Plastic Section.

2 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: Bill

3 Orr, Waste Board Recycling Technologies Branch.

4 MS. HOWARD: Jan Howard, Waste Board, Plastic

5 Recycling Technologies.

6 MR. STALKER: Brian Stalker, Waste Board, Plastic

7 Technologies.

8 MR. POLLACK: Randy Pollack from the Law Office

9 of Randy Pollack.

10 MR. LARSON: George Larson representing Illinois

11 Tool Works and America Chemistry Council.

12 BOARD ADVISOR DAVIS: Rachel Davis, Advisor to

13 Board Member Rosalie Mulé.

14 BOARD MEMBER MULÉ: Rosalie Mulé, Board member.

15 CHIEF DEPUTY DIRECTOR NAUMAN: Julie Nauman,

16 Executive Office, Waste Board.

17 ACTING DEPUTY DIRECTOR VAN KEKERIX: Lorraine Van

18 Kekerix, Waste Board.

19 BOARD MEMBER PEACE: Cheryl Peace, Board member.

20 BOARD ADVISOR NUFFER: John Nuffer, Advisor of

21 Board Member Cheryl Peace.

22 MR. CLAES: Gerry Claes, Graham Packaging.

23 MR. BERUMAN: Jerry Beruman, California

24 Integrated Waste Management Board, Plastics Recycling

25 Technology Section.

1 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

2 LEAON: That's everyone in the room. For those of you
3 that are on the phone, if you could introduce yourself and
4 give us your name and organization.

5 MR. MCANENY: Jack Mcaneny with Proctor and
6 Gamble Company.

7 MS. MOORE: Patty Moore with PRCC.

8 MS. ROUL: Laura Roul with Meadwest Baco.

9 MR. ALEXANDER: Steve Alexander with Plastic
10 Recyclers.

11 MR. O'GRADY: Bill O'Grady with Talco Plastics.

12 MR. YEDIDSION: Parham Yedidsion, Envision
13 Plastic.

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

15 LEAON: Anyone else on the phone?

16 MR. ALEXANDER: Mike, this is Steve Alexander.
17 Can you increase the volume at all?

18 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

19 LEAON: On this, is that better? Is that better, Steve?

20 MR. ALEXANDER: Not really, but just do the best
21 you can. I'll do the best I can.

22 Also, the agendas are not up, at least on the
23 address that Jerry gave us.

24 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: Have
25 them refresh their page.

1 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

2 LEAON: Try refreshing your page, Steve, and see if that
3 helps.

4 MR. ALEXANDER: Thank you. Sorry to bother you.

5 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

6 LEAON: We have one more person who has just joined us in
7 the room.

8 MS. LIVINGSTON: Carol Livingston, Soap and
9 Detergent Association.

10 MR. BERUMAN: Steve, on the website, to get the
11 agenda, if you go to the June 26 entry and click on the
12 link, the agenda is in there.

13 MR. ALEXANDER: I'm sure you -- okay. It ain't
14 there for me. So I'll try refreshing again. Okay.

15 MR. BERUMAN: Okay.

16 (Thereupon an overhead presentation was
17 presented as follows.)

18 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

19 LEAON: Okay. Well, at this point then we'll go ahead and
20 review the agenda. And I apologize for the technical
21 difficulty, Steve.

22 Okay. This morning we will be covering primarily
23 the definitions in the regulations. And I'll start off by
24 reviewing our ground rules and guiding principles and the
25 rulemaking process that we're engaged in.

1 And I'll provide a brief overview of the proposed
2 changes to the regulations and why we're proposing these
3 changes and then begin a process of walking through the
4 regulations.

5 And there are some key definitions that I would
6 like to focus on this morning. And these would include
7 rigid plastic packaging container definition, product
8 manufacturer definition, postconsumer material definition,
9 and also have significant amount of comments surrounding
10 the source reduction option. However, I believe that most
11 of those issues are going to be outside the scope of the
12 rulemaking and are issues that have to be dealt with
13 through statute, but we will look at that definition.

14 After we get through the definitions, which I
15 hope to do that this morning, we'll then take an hour
16 lunch break from 12:30 to 1:30. And we'll be reconvening
17 in the afternoon in a different room. We'll be in the
18 Byron Sher Auditorium, which if you go out these double
19 doors in the back of the room here and turn left, you'll
20 see the sculpture -- go past the stairwell, turn left, and
21 you'll see the art work structure hanging from the
22 ceiling, and the Byron Sher Auditorium is towards that
23 structure on your left.

24 In the afternoon, we'll be discussing the
25 compliance options, the new compliance options provided by

1 recent statutory changes. And in addition, certification
2 processes that had not been previously included in the
3 regulations, we're proposing to include those in the
4 regulations to help provide greater clarity and more clear
5 direction to the regulated community, we'll be discussing
6 those processes.

7 However, I think the most important topics that
8 we'll be discussing today will be the definitions, which I
9 hope we'll get through this morning.

10 Are there any questions on the agenda?

11 Okay. And we do have two Board members here with
12 us this morning. And I'd like to provide time for the
13 Board members if you have any opening remarks you'd like
14 to share. Okay.

15 --o0o--

16 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
17 LEAON: The ground rules that we're asking everyone to
18 follow this morning is that we have only one person
19 speaking at a time, so we can ensure that everyone is
20 heard.

21 There is no interruptions. Let's give people an
22 opportunity to have their say.

23 We'd like to have objective discussion and no
24 criticisms of opinions that are offered.

25 Listen respectfully and sincerely.

1 All suggestions will be recorded.

2 And questions may be asked to clarify ideas.

3 And we have these ground rules posted on the side
4 of the room here.

5 --o0o--

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

7 LEAON: Concerning guiding principles, in pursuing this
8 rulemaking, we wanted to take a fresh look at the
9 regulations. But we also wanted to have a framework for
10 how we're going to look at the regulations and what
11 changes we're going to consider and what are our
12 objectives in doing this rulemaking.

13 And based on our experience with implementing the
14 law, we're proposing changes that we believe will support
15 the intent of the law in regard to diverting plastic
16 packaging from disposal. So we think there's some key
17 environmental benefits that we could achieve through these
18 changes.

19 Specifically, changes should increase the use of
20 postconsumer material in packaging in products, increase
21 the recycling rate for plastic packaging, and improve the
22 recyclability of plastic packaging.

23 --o0o--

24 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

25 LEAON: In addition to those environmental benefits, we're

1 also looking at a process and procedural improvements to
2 the certification, and the proposed changes to the
3 regulation. It is our belief that will help to do several
4 things, including improving the efficiency in initiating
5 and completing certification cycles, increase the
6 effectiveness of the law by allowing the Board to conduct
7 annual certification, and improve outreach and education
8 to the regulated community.

9 Also, we believe that these changes will increase
10 compliance with the law through more consistent
11 enforcement and more effective education and outreach.

12 And, finally, we believe these changes will
13 ensure that companies with similar packaging lines receive
14 fair and equal treatment under the law by providing more
15 specific and clear definitions regarding what an RPPC is
16 and who is the responsible entity for products sold into
17 the California marketplace and ensuring they report on
18 those product lines and packaging.

19 --o0o--

20 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
21 LEAON: Regarding the rulemaking process, we initiated
22 this process last March when we took an agenda item to the
23 Board. And at that time, the Board directed us to pursue
24 a two-tier process, first beginning with an informal
25 review period. And this workshop today is part of that

1 informal review period.

2 The Board also directed us to convene an Advisory
3 Group consisting of industry, government, and
4 environmental constituents. We convened that Advisory
5 Group, and we had two meetings with that group.

6 We've carefully considered their comments using
7 our guiding principles as filters. We've revised the
8 regulations. And the packet that we're looking at today
9 reflects the outcome from that process. We'll be
10 considering additional comments and input today, and again
11 using our guiding principles as a filter be making
12 additional changes to the regulations.

13 Once we have done that -- well, first let me back
14 up for a second. I do want to take a moment to thank the
15 Advisory Committee for their assistance in the project and
16 their thoughtful comments on the proposed regulatory
17 changes.

18 If we can move to the slide on time line.

19 --o0o--

20 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

21 LEAON: So where we're at now is at the end of the
22 informal review and comments phase of this rulemaking
23 effort.

24 And as I was saying, we will take comments from
25 today, and using our guiding principles, make additional

1 changes as necessary.

2 And our objective is to take the final version of
3 the revised regulations to the Board in September for
4 consideration of approval to file the rulemaking notice
5 with the Office of Administrative Law.

6 If the Board approves filing of the notice with
7 OAL, or Office of Administrative Law, I would anticipate
8 that we would get that notice to OAL in late September,
9 early October.

10 This would then initiate a formal rulemaking
11 phase of this effort. We would have one year to complete
12 the regulations from the date that the OAL approves the
13 notice. This will provide additional opportunity for
14 public review and comment through this formal rulemaking
15 review process.

16 --o0o--

17 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
18 LEAON: Regarding the need for rulemaking, based on
19 experience with implementing the RPPC regulations, it has
20 become clear that the regulations are in need of an
21 overhaul.

22 We base this decision based on the fact that
23 regulations were written prior to the Board having any
24 experience with executing the program. The regulations
25 still reflect obsolete provisions of the statute. In

1 addition, the current regulations are burdened with dead
2 weight that not only makes them harder to read but creates
3 an opportunity for confusion.

4 Also, the current question and answer format is
5 difficult to follow. Therefore, the regulations need to
6 be better organized and made more clear. In addition, key
7 definitions are in need of further clarification.

8 And finally, the certification process needs to
9 be more clearly spelled out in the regulation to provide
10 clear direction to the regulated industry.

11 --o0o--

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

13 LEAON: So based on those conclusions, we have revised the
14 regulations to move to a standard format.

15 We will no longer be using a question and answer
16 format.

17 We have deleted language based on statute that
18 has been repealed or is obsolete.

19 We have reorganized the regulations to make them
20 easier to read. We think they flow much better.

21 We have made changes that will better help to
22 achieve the legislative intent to divert plastic package
23 from disposal. And many of those changes are definitional
24 changes.

25 And we've included language to reflect

1 certification processes which have not clearly been
2 spelled out before, including selection of product
3 manufacturers for certification, and notification to those
4 product manufacturers that they are subject to the law.

5 --o0o--

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

7 LEAON: In reviewing the draft regulations, the
8 regulations can be broken down into several sections or
9 segments. The first is definitions. And this is where we
10 find our key definitions for postconsumer material,
11 product manufacturer, and the definition of a rigid
12 plastic packaging container.

13 The next section lays out the compliance options
14 for product manufacturers. This would include the
15 recycled content, the source reduction option, the
16 reuse/refill options, and the recycling rate options
17 either for a particulate type of container or product
18 associated container, and now with recent statutory
19 changes also resin specific-recycling rate. And now with
20 also new statutory changes the use of California
21 postconsumer material on other products or packaging.

22 The next key section identifies the container
23 information that product manufacturers must report on,
24 followed by container manufacturer requirements.

25 Then number six, the compliance option

1 calculations or regulations spell out how to calculate
2 compliance for container lines.

3 The next key section would include the waiver and
4 exemption requirements.

5 And followed by a new section which would be a
6 container determination appeal process, which has not been
7 included in the previous regulations. And we think this
8 is a key addition through this effort.

9 And finally, violations and penalties.

10 --o0o--

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

12 LEAON: Before I proceed, are there any questions or
13 comments?

14 Okay. We have a question in the room.

15 MR. LARSON: Yeah, George Larson.

16 I participated in the Advisory Committee
17 meetings. I believe there were two of them. And I don't
18 know how others on the Advisory Committee received the
19 revised regulations, but on behalf of Illinois Tool Works,
20 I made some substantial comments for consideration for
21 change. And I guess, quite frankly, I'm underwhelmed at
22 the amount of change. I think there were two changes
23 noted in the regulations.

24 So I was hoping maybe you might tell us that some
25 of the Advisory Committee recommendations are under

1 further study. Because, otherwise, it kind of makes it
2 look -- the Advisory Group exercise look like it wasn't
3 very productive. And I'm hoping some of the efforts to
4 clarify these regulations do that.

5 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
6 LEAON: Okay. In response to that, George, I don't think
7 there was unanimity of opinion on the Advisory Committee
8 on the changes that were proposed. So that was one
9 difficulty.

10 Also, in considering the comments, we were also
11 applying the guiding principles which I set forth here.
12 And we wanted to make sure that any changes we made were
13 consistent with those guiding principles to either support
14 the intent of the law or to further clarify the process.

15 And we will have an opportunity today to go back
16 through the regulations and certainly have an opportunity
17 to further discuss those changes today. But again, we
18 want to make sure that whatever changes we make are
19 consistent with supporting the intent of the law and also
20 helping to clarify the process for the regulated
21 community. And certainly we'll discuss -- any changes you
22 would like to see today, we'll discuss that further.

23 Any other comments or questions in the room or on
24 the phone?

25 I think at this point we'll begin to look at the

1 regulations themselves, and we'll go through section by
2 section. And please feel free to comment as we proceed
3 through the regulations or ask questions. And there are
4 copies of the revised regulations in the back of the room.

5 And for those of you on the phone, you should be
6 able to find the revised regulations on the Internet. Let
7 me ask has everyone been able to locate those that are on
8 the phone?

9 MR. YEDIDSION: Is this different than the
10 attachment that was Jerry's e-mail last week?

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
12 LEAON: Well, the version on the Internet today does
13 include page numbers. I believe the version that was sent
14 out previously did not. That was an oversight on our
15 part. So if you can -- it would probably be easier to use
16 the version that's on-line for that reason. But if you
17 don't have access to that, Parham, we'll certainly help
18 you stay on task in regard to what section we're looking
19 at.

20 Okay. Let's begin looking at the regulations.
21 And again for those key definitions which I've alluded to,
22 we'll have some slides to go through on those definitions.
23 Other definitions I think we can go through pretty
24 quickly. And I won't have a slide for every definition
25 that we're looking at.

1 So looking at the draft regulations beginning on
2 page 1, we had stricken some statutory language that we
3 felt was redundant and not necessary to be included in the
4 regulations themselves. Definitions begin actually on
5 page 2.

6 Going with the definition of the Board means the
7 California Integrated Waste Management Board.

8 Capable of multiple reclosure, we've deleted this
9 definition based on changes we've made -- are proposing to
10 make for the definition of rigid plastic packaging
11 container.

12 We've deleted the definition of cosmetic. I
13 believe what was based on it was redundant statutory
14 language.

15 Container manufacturer -- and, please, if anybody
16 has a question or comments as we go through, please
17 interject.

18 MR. POLLACK: Mike, should we start discussing
19 about taking out the reclosable, eliminating that
20 definition? Do you want to do that now or wait?

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
22 LEAON: If we can wait until we get to the definition of
23 RPPC, and let's tackle it there.

24 Okay. We've revised the definition of container
25 manufacturer means a successor company that sells any RPPC

1 subject to this article to a product manufacturer that
2 sells or offers for sale in the state any product
3 packaging container.

4 No change to the curbside collection program
5 definition.

6 Reference to drugs again was redundant of
7 statutory definitions.

8 Moving to page 3, final end user means a person
9 or the entity, which we've added that language, that
10 purchases an RPPC in order to use that product held by the
11 container. The final end user is the person or entity
12 that removes the product from the container and discards
13 the container.

14 Again, some definitions regarding food and infant
15 formula that we deleted. Again based on the fact we don't
16 want to reference existing statute in the regulations. We
17 feel like that will help improve clarity.

18 And we've also deleted language regarding
19 introduced, labeled, and product manufacturer. And we've
20 addressed labeling under the revised product manufacturer
21 definition.

22 MS. MOORE: This is Patty.

23 Can you tell me which PowerPoint page you're on
24 and also if you're referring to the regulations which
25 page?

1 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

2 LEAON: Yes, Patty. We're still on page 12 of the
3 PowerPoint presentation. And I'm moving through page 4 on
4 the revised regulations.

5 SUPERVISOR PATRICK: Thank you.

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

7 LEAON: And I think at this point let's move to the next
8 slide, Jerry, on postconsumer material definition.

9 --o0o--

10 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

11 LEAON: And unless there are any questions, I think our
12 time will be used best by going to the key definitions in
13 this.

14 And let's start with the definition of
15 postconsumer material, which is on page 7 of your
16 regulations. And the change we've made here is there was
17 language allowing a product manufacturer to use
18 post-industrial material if that material was essentially
19 normally disposed of. And we've deleted that language.
20 And we feel that makes this definition consistent with the
21 statutory definition for the RPPC law and how it's defined
22 in other Board statutes as well. And we believe that will
23 eliminate any confusion over what counts as postconsumer
24 material.

25 And based on staff's experience in implementing

1 the program, we feel that this change is necessary because
2 of some questionable claims we've had in regard to
3 counting post-industrial material towards RPPC compliance.

4 We've also had input that there are markets for
5 post-industrial material where the material is routinely
6 reused as a business practice that very little of it is
7 actually going to disposal. So we make those changes
8 based on those factors.

9 And why don't we open it up for question and
10 comments on this definition.

11 MR. LARSON: George Larson.

12 I guess I would at least want to state for the
13 record that I feel the assumptions underlying the decision
14 to eliminate post-industrial scrap from the eligible flow
15 of materials that might help individual companies satisfy
16 the RPPC content laws will actually serve as a negative
17 impact on the recycling of those materials, as there is
18 evidence for Illinois Tool Works companies specific
19 references which I can provide where certain types of
20 resins, which we've discussed particular problems with
21 certain resin types like polypropylene, that
22 post-industrial scrap is targeted and selected and sought
23 out in order to provide a feedstock to enable a container
24 to comply with the law.

25 The fact that you make this change in regulations

1 to no longer allow that type of credit, at least it's our
2 position that there is a potential for that to serve as a
3 detriment to recycling.

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

5 LEAON: So let me clarify on that point, George. So your
6 belief is with this change that practice would
7 discontinue, because there would be no incentive to use
8 the post-industrial material?

9 MR. LARSON: You would have definitely a negative
10 impact.

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

12 LEAON: Okay.

13 MR. YEDIDSION: Was that answer to that yes?

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

15 LEAON: Yes. I'm sorry. For those of you that were on
16 the phone, the answer to that was yes, there would be a
17 negative impact.

18 Any questions or comments on the phone regarding
19 the change?

20 MR. YEDIDSION: Yes. I think we discussed this
21 before. I don't see any negative impact in the usage of
22 post-industrial --

23 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

24 LEAON: Parham, could you speak up a little?

25 MR. YEDIDSION: I don't see a negative impact in

1 the usage of post-industrial material. That kind of
2 material has been recycled and used in manufacturing
3 operations and recycling operations for years and years
4 and years. In fact, at times there's possible forages of
5 that material as well. So in terms of recycling it, using
6 it, there's no negative impact. And I think what George
7 might be referring to is have the ability of receiving
8 credit towards usage of postconsumer as opposed to it not
9 being recycled. I don't see it not being recycled.

10 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

11 LEAON: Thank you.

12 So I think this change conforms the regulation
13 clearly with what the statutory intent was regarding
14 promoting markets for postconsumer material.

15 In addition, you know, we have heard that there's
16 some difference of opinion on the impact here, that again
17 certainly the change conforms our definition of PCM in the
18 RPPC regulations with the statutory definition and the use
19 of that term and other laws as well, including the plastic
20 trash bag law.

21 Any other questions or comments on this
22 particulate definition?

23 Okay. If you go to the product manufacturer
24 slide, this would be page 14 on the PowerPoint definition.

25 --o0o--

1 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
2 LEAON: This is another key definitional change that we're
3 proposing. And again, there has been some debate on these
4 changes.

5 Initially, our thought was to certify the company
6 that was responsible for making packaging decisions. As
7 we went through this informal process, based on the input
8 we've got, we've taken a different track. Often, it's not
9 the company that is causing the product to be offered for
10 sale in California -- well, let me back up.

11 Often, we have companies that are causing the
12 product to be offered for sale in California not taking
13 responsibility for that decision or for generating the
14 product to be sold in California. So consequently, our
15 thinking is the definition of product manufacturer should
16 focus on the company that has control over the generation
17 and sale of the product.

18 We believe this is consistent with the concept of
19 producer responsibility. It is our belief it will help to
20 green the supply chain by requiring product manufacturers
21 to ask their suppliers for packaging that meets
22 California's law.

23 Specifically, we have seen some large retailers
24 through the current '05 certification, or in response to
25 that, requiring their brand name -- they're putting their

1 brand name on it, but they're requiring the supplier to
2 put "manufactured by" on the label, thus putting reporting
3 responsibility onto their suppliers and not taking direct
4 responsibility for those products and the packaging that
5 they are, in fact, the generator of.

6 So in regard to the definition itself, instead of
7 using a strict hierarchal approach to determining who the
8 product manufacturer is, we've made the language in the
9 definition more permissive and state, "The Board may
10 identify a product manufacturer through indications on a
11 product label, such as, but not limited to, the branding,
12 the name of the entity that manufactures the product held
13 by the container, the name of the entity that distributed
14 the product if the manufacturers is not identified on the
15 label, and the name of the entity that imported the
16 product if the product manufacturer or distributor are not
17 identified on the label.

18 And again, the key concept in this change is
19 requiring the company that's causing the product to be
20 generated and sold in California to take responsibility
21 for reporting on those product lines and taking
22 responsibility for the packaging that goes along with that
23 product.

24 If we have a comment in the room, just use the
25 microphone, please.

1 MR. POLLACK: Randy Pollack.

2 The question I also have here is if the retailer
3 has a private label and they come to the Board, and
4 provide that we received this product from X company,
5 would that -- under this definition, I would see that
6 would be providing you the information of who actually
7 puts it into the commerce. Is that a correct reading?

8 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

9 LEAON: Well, I think under this definition it wouldn't
10 be the company that's supplying a product under contract
11 to the retailer that's putting its brand name on it. We
12 would want reporting responsibility to rest with the
13 retailer that's putting its brand name, even though the
14 product that they're selling is being manufactured for
15 them by a separate company.

16 MR. LARSON: Michael, George Larson.

17 I also have two questions here. One is in
18 subsection 2 of the sold or offered for sale which has the
19 inclusion of purchases of products on the Internet. I've
20 raised the issue before of the Board's authority to
21 regulate the Internet and its sales there on. Would you
22 explain how the Board would -- the process of tracking
23 Internet sales for demonstration of compliance?

24 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

25 LEAON: Where are we looking at, George, in the

1 definitions?

2 MR. LARSON: Page 8, subsection 2, which is the
3 list in the hierarchy of how product manufacturers are
4 identified.

5 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
6 LEAON: Okay. You know, I don't think we're trying to
7 regulate the Internet. We are using the Internet as a
8 tool to identify companies which are offering products for
9 sale in California.

10 So we're not attempting to regulate the internet
11 in any way. Again, it's simply a tool for us to use to
12 identify product manufacturers that are selling product
13 into California.

14 MR. LARSON: But when it's clear, like you have a
15 container in your hand and you bought it off the retail
16 shelf and you also have the product manufacturer name, the
17 purpose of having the product's manufacturer is that they
18 are potentially subject to demonstrating certification
19 through filling out some forms and demonstrating purchase
20 of postconsumer resin. I'm just wondering how that
21 happens on products that are sold on the Internet. It
22 doesn't seem to be that easy of a task.

23 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
24 LEAON: Well, we have, in fact, bought products off of the
25 Internet that are packaged in regulated RPPCs. And if we

1 can buy that product off the Internet, we feel it meets
2 the definition of being sold or offered for sale in
3 California. Certainly, we would apply the process of
4 identifying who the appropriate product manufacturer is.

5 MR. LARSON: Then secondly, we discussed on many
6 occasions how international sales will be handled to
7 provide equity amongst domestic manufacturers and
8 distributors of product versus those that are imported
9 from foreign countries where I think if it's not a
10 question of whether you did enforce California's law as
11 much as it is a question are the certifications coming
12 from those originating countries verifiable in and of
13 themselves.

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
15 LEAON: Well, clearly, we don't also have jurisdiction to
16 send a certification to overseas manufacturers. And it's
17 not our intent to do that.

18 We have had circumstances, however, where we have
19 sent a certification to a domestic manufacturer who has
20 suppliers in China. And we have examples of where we've
21 been successful in providing the certification forms to
22 their overseas suppliers particularly the container
23 manufacturer, container forms, not the product
24 manufacturers.

25 But again, clearly we would not send a

1 certification packet to product manufacturer. But for
2 domestic manufacturers that are sourcing materials
3 overseas, I think they have a responsibility for their
4 supply chain to be able to report that the containers
5 there that product is being shipped in are compliant.

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

7 LEAON: Any questions or comments on the phone?

8 MR. MCANENY: Yes. This is Jack Mcaneny with
9 Proctor and Gamble. I just also have a couple comments on
10 that definition.

11 The first is, you know, Mike, I certainly
12 appreciate the issue you all are trying to address with
13 the proposed change. But relative to the existing
14 definition, I want to echo by earlier comment. I think
15 the change could introduce a fair amount of ambiguity into
16 the system. What I mean by that is by using the term
17 "may," you know I did envision two scenarios as a
18 practical example.

19 One is if you were to go to a retailer and
20 private or label manufacturer, you know I could see a
21 scenario where those two entities could look at this
22 definition and each potentially come to the conclusion --

23 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

24 LEAON: Jack, I hate to interrupt you, but we're having
25 trouble hearing you. Could you speak up a little bit?

1 MR. MCANENY: Sure. I'm sorry. Is that any
2 better?

3 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
4 LEAON: Much better.

5 MR. MCANENY: I'm sorry. I apologize.

6 What I was saying was first I appreciate the
7 issue that you are trying to address from the standpoint
8 of scenarios that you described. But I do think the
9 proposed change would potentially introduce more ambiguity
10 than the current definition.

11 What I mean by that by the introduction of the
12 term "may" in the last sentence there, the Board may
13 identify the one of those four options, I could envision a
14 scenario where you have two entities, one potentially
15 being a private retailer and one being a manufacturer,
16 where each would read that definition and assume the other
17 or interpret that the other was responsible for
18 compliance.

19 The other thing is with the addition of the brand
20 name you also may run into scenarios where brand names are
21 licensed, but the manufacturing of those products are
22 completely sold by another entity. So I think the
23 advantage of the existing definition is it offers the
24 regulated community a very clear hierarchy of who is the
25 responsible party. And at the end of the day, I would

1 think that what you would want that definition to drive to
2 is a very clear statement of what is that responsible
3 party, because that's what the Board's and the
4 responsibility party understand. I just offer that for
5 consideration.

6 The other points I would like to raise is on the
7 fourth sub-bullet, it talks about any entity that has a
8 legally recognized corporate relationship with a product
9 manufacturer may be allowed to assume the responsibility.
10 I believe in the existing language that was currently
11 written as shall. Is there a particular reason why that
12 was changed to be more permissive as to allowing that
13 flexibility?

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
15 LEAON: Yes. Let me read that language.

16 "Any entity that has a legal, a recognized
17 corporate relationship, a parent, subsidy, affiliate, with
18 a product manufacturer may be allowed to assume
19 responsibility through the product manufacturer as it
20 relates to the requirement of this law."

21 And lastly I want to interject here that I
22 believe the rationale for that change was we had included
23 in past certifications subsidiaries of larger companies.
24 And we wanted to provide discretion for that subsidiary to
25 also have the parent company report on their behalf in the

1 event they didn't have the information or data in order to
2 complete the certification forms. I believe that was the
3 rationale.

4 Do you have anything else on that? Jerry, I was
5 reading. It looks like the language was moved and the
6 main point that you were talking about is that we change
7 "shall" from "shall" to "may."

8 MR. MCANENY: Yes. That's exactly right.

9 And I guess the way I interpret that with the
10 existing definition with the word "shall," for example
11 that would be our choice as to whether or not we want to
12 try to apply corporate averaging across those
13 subsidiaries. And the way I read the "may" language, that
14 would be essentially the Board's determination as to
15 whether or not that would be allowed. So that's the
16 significance of the word "shall" in that.

17 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
18 LEAON: Okay. I see your point. And yeah, it was not our
19 intent to make that decision something the Board would
20 decide. Clearly, that should remain at the discretion of
21 the product manufacturer.

22 MR. MCANENY: Well, given that comment or
23 perspective, I guess by comment or suggestion would be if
24 we can change that word "may" to "shall," I think that
25 would make that clearer. Thank you.

1 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

2 LEAON: Okay. Any other questions? Yes. We have a
3 question in the room here.

4 BOARD ADVISOR PECK: Chris Peck from the office
5 of Board Member Gary Petersen.

6 Mike, I'm a little confused by the construction
7 here, the concept of having definitions within a
8 definition. I've not seen that in regulations before.
9 And I'm just wondering if maybe staff would take a look at
10 that and think about pulling those things out. Because it
11 seems to me they have applicability across the
12 regulations, not just within the specific definition.

13 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

14 LEAON: So you'd like to see us list those?

15 BOARD ADVISOR PECK: You know, you're defining
16 terms within a definition, it would make more sense to me
17 if they would just be defined on their own.

18 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

19 LEAON: Okay. Thank you, Chris.

20 Any other comments or comments in the room or on
21 the phone?

22 MR. ALEXANDER: Mike, this is Steve Alexander.

23 Can you tell me what we are working off the
24 amended regulations here? Are you looking at the June
25 14th memo that Jerry sent to the Advisory Group?

1 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
2 LEAON: Yes. It should say revised June 14th, 2007. And
3 we're working on page 7 and 8 on the definition of product
4 manufacturer.

5 MR. ALEXANDER: Thank you.

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
7 LEAON: Okay. Do we have any more comments or questions
8 on this definition?

9 On the phone?

10 All right. Why don't we move on to the
11 definition of rigid plastic packaging container, which is
12 on page 15 of the PowerPoint presentation and going on
13 page 9 of your regulatory packet.

14 And I have some slides and pictures to share with
15 you for this particular definition. And why don't we run
16 through the status quo we have with some examples of
17 typically regulated containers.

18 --o0o--

19 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
20 LEAON: We have tubes typically. We find the lot of these
21 in office supply stores, as you can see, containing binder
22 clips and paper clips. We've also found tubes held to
23 contain toys. So these are fairly ubiquitous in the
24 market.

25 --o0o--

1 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

2 LEAON: The next example would be boxes again capable of
3 reclosure, rigid, maintains their shape. We see a fair
4 amount of these as well through the certifications.

5 --o0o--

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

7 LEAON: Moving to the next slide, we see a hinge container
8 sold for containing batteries, CD spindles, staff
9 concludes are regulated though there is some debate. And
10 we may hear some discussion on that today regarding the CD
11 spindles.

12 --o0o--

13 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

14 LEAON: Cleaning supplies, of course a lot of RPPCs in the
15 janitorial supply industry.

16 --o0o--

17 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

18 LEAON: Containers used to contain cleaning wipes or other
19 health care related.

20 --o0o--

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

22 LEAON: So that's an example of status quo, some examples
23 of containers we find in certifications.

24 Regarding the definition itself, we believe that
25 based on our experience with conducting certifications the

1 existing definition has created an unlevel playing field
2 where one container is regulated, but virtually a
3 container but for handles or closure capability is not
4 regulated. We would like to ensure that the intent of the
5 law is being met and that the manufacturers are being
6 treated equitably and fairly. And we think the changes
7 we're proposing to this definition will accomplish that.

8 So let's look at some -- what's our next example?

9 --o0o--

10 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

11 LEAON: Our next example goes into closure. But before we
12 tackle the closure issue, let's deal with the labeled
13 volume issue as part of the RPPC definition.

14 The labeled volume, previously it was at the
15 discretion of the product manufacturer to either use the
16 labeled volume on the container or to use as volumetric
17 equivalent. However, what we're proposing to do now is to
18 first require the product manufacturer to use the labeled
19 volume. No longer make it discretionary. If there is no
20 labeled volume, then the product could use the volumetric
21 equivalent of the containers. And regulated containers
22 are between eight ounces and five gallons.

23 This has become an issue because a product with a
24 label volume of five gallons may be sold in a container
25 that has a volumetric equivalent that's slightly over five

1 gallons. Since this was a discretionary determination, of
2 course, product manufacturers would opt to use the
3 volumetric equivalent and thus that particular container
4 which otherwise would have been regulated falls outside
5 the definition of an RPPC would no longer be regulated.

6 We feel that this is more consistent with the
7 intent of the law. I think, clearly, the legislation
8 intended that products labeled five gallons would be
9 regulated under the law. And certainly I think this
10 change will help to support the intent of the law by now
11 requiring those product manufacturers to count those
12 product lines that are labeled five gallons to be part of
13 their certification.

14 MS. MOORE: This is Patty Moore.

15 Could you please make the volume a little louder?
16 It's very difficult to hear on the phone. Either speak
17 louder or turn up the volume.

18 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

19 LEAON: All right. We'll check. And perhaps I need to
20 speak more directly into the microphone. Is that better?

21 MS. MOORE: That's better.

22 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

23 LEAON: All right. I apologize, Patty.

24 Okay. So the change we're proposing is to
25 require the product manufacturer to use the labeled volume

1 if there is a labeled volume and only to allow the product
2 manufacturer to use the volumetric equivalent if there is
3 no labeled volume. Again, I think this supports the
4 intent of the law to support markets for postconsumer
5 material. It includes pales and buckets that should be
6 regulated that are labeled as five gallons.

7 All right. With that, I'll open it up for
8 comment.

9 MR. YEDIDSION: Item 1 -- this is Parham
10 Yedidsion -- in regards to rigid plastic package
11 containers are capable of --

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
13 LEAON: Parham, you'll have to speak up louder. And if
14 you're on the phone, if you could please identify yourself
15 when you have a comment. That would be helpful for our
16 court reporter.

17 MR. YEDIDSION: Parham Yedidsion.

18 Item 1, rigid plastic packaging containers are
19 capable of at least one closure. About the third line
20 down from that paragraph you have that are sold holding a
21 product.

22 There are certain packaging items such as bales
23 that are sold in markets that their primary purpose is
24 just as that. It doesn't hold any product. It is a
25 package that a consumer can buy and use out as a storage

1 or whatever they want one time use or otherwise.

2 I feel maybe the way you have it here it would
3 not include those.

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

5 LEAON: Yes. That is correct, Parham. We the look at
6 that as an option. But we felt it opened up the universe
7 too wide and would include other containers. And perhaps
8 we can look at some of the examples.

9 MR. BERUMAN: Hold solding a product is a
10 statutory language. So we can't make any changes through
11 this venue as far as hold solding a product goes.

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

13 LEAON: Parham, are you referring to the closure issue
14 or --

15 MR. YEDIDSION: No. Not the closure issue. The
16 third line just says sold holding a product. Because at
17 times the package is the product.

18 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

19 LEAON: Right. You know, and Jerry is correct. We're
20 bound by statute out on that particular issue. So that
21 would be a statutory change.

22 MR. BERUMAN: And one more thing, Parham. I'm
23 not sure if that relates to your issue. But at one point
24 the bucket may be sold empty, but the law applies to when
25 it's sold to the final end user as far as holding a

1 product. So it may be sold to a middle entity, but the
2 final end user gets it holding a product.

3 MR. YEDIDSION: I'm referring to some buckets
4 sold at Home Depot, for instance, or at Lowes where the
5 end consumer can buy it for their own particular purpose,
6 the homeowner. And in that situation, the packaging is
7 the product. But I'll go along with whatever staff is
8 recommending.

9 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
10 LEAON: Parham, I'm sorry. We couldn't hear your last
11 comment.

12 MR. YEDIDSION: I said I was sort of thinking
13 about some items that are sold, let's say, at a Home Depot
14 or a Lowes or something similar to that where a
15 multi-purpose bucket is sold just as that, as an empty
16 bucket. And that is the product. It doesn't hold
17 anything. It is the product. And the consumer buys it
18 and utilizes it any which way they want.

19 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: This is
20 Bill Orr.

21 One thing I just wanted to mention -- we'll get
22 to this a little bit later. Under the new statutory
23 provisions, while those buckets will not count toward a
24 company, under the new compliance option if postconsumer
25 plastic is put into those buckets, they could be claimed

1 under that new compliance option. So while it in a sense
2 isn't part of the original equation, there is the
3 opportunity to provide credit for those kinds of packages
4 or products.

5 MR. BERUMAN: Just a note more to people on the
6 phone. We have contacted the telephone company that's
7 providing the conference call. And they say the volume is
8 at the maximum currently on your end and on our end. So
9 we'll make an effort to speak clear into the microphones
10 here. And if you have comments on the phone, please speak
11 clearly and loudly as well so we can hear it here in the
12 room and our court reporter could take note of it.

13 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
14 LEAON: Thank you, Jerry.

15 MR. POLLACK: Mike, Randy Pollack.

16 This is the whole crux of the whole law right
17 here, what the definition of RPPC is. The pictures you
18 showed earlier, I would dispute whether those are all
19 RPPCs. You mentioned the staff has sometimes made that
20 determination currently under the law. The Board has the
21 opportunity to review it and determine whether those are
22 RPPCs or not. And that has not been made at this point.

23 My concern is that you have eliminated all the
24 definitions of flexible. And my first question is what
25 would the staff view as flexible packaging?

1 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
2 LEAON: Well, the definition refers to packaging. And
3 it's capable of maintaining its shape. I think that's the
4 guideline we go by. If the package can maintain its shape
5 while not holding the product, that's how we've looked at
6 it. In that case, it is a rigid package. They're clearly
7 a film. It doesn't do that. It doesn't show that shape.

8 MR. POLLACK: So basically it would be the idea
9 of the staff that only film would be flexible. So
10 essentially every plastic packaging out there excluding
11 film would be covered under this law?

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
13 LEAON: If it meets the definition and it meets the
14 definition of capable of maintaining shape while
15 holding --

16 MR. POLLACK: I have trouble with that
17 definition. I don't believe that's the intent of the law.
18 I think there was an intent there's a distinction between
19 rigid and flexible. And I don't believe at that time they
20 thought that film was the flexible part of the plastic
21 packaging. All plastic packaging is included under the
22 law. So I have concerns with the definition at that
23 point.

24 The other issue that we have is you're now going
25 to bring in the whole universe of plastic packaging. And

1 what that will do is basically you walk into any retailer,
2 any plastic you see in that room would be covered under
3 this law according to this definition.

4 And I think what you've done is first made this
5 law even more unworkable, because right now you may have
6 ten items that may be reported. You multiply that by 50
7 or 100 times. The retailer has to report nexus of product
8 to the Board, which I understand at this time the Board
9 does not have even the capacity to view all that
10 information.

11 I'm also concerned that no review of
12 certification in the past has been undertaken to determine
13 what we are finding out there. Are there certain
14 difficulties that companies are having with certain
15 plastic packaging out there that they can't use recycled
16 content. They can't use source reduction. And I believe
17 it's more important to look at those issues before we come
18 up with a definition of RPPC.

19 To me, those things can be pretty flexible. You
20 can bend it, turn it. You know, I'm not quite sure that
21 film -- I would say that's not even flexible film because
22 you can ball it up. I'm not quite sure what the
23 definition of flexible is.

24 And I would urge the staff to review this, to get
25 a line of products and containers and take a look at them

1 to determine what actually is an RPPC. None of these
2 containers have gone to the Board or through an
3 administrative law judge decision to determine what that
4 is. And I think what we are doing right here is just
5 complicating the whole process until we can actually sit
6 down and come up with a determination.

7 Additionally, you know, I would for the CD
8 spindles there are questions whether that's a product or
9 packaging. And I think that's another issue we have to
10 continue to look at.

11 Also I would say that one of the issues that
12 you're going to run into is that if you now include all
13 packaging, because basically this is what this definition
14 does. Is that you have companies who are not subject to
15 the law who will now be subject to this law. And to say
16 that, okay, going January 1st, 2008, you're subject to
17 this law. I don't think is workable. It takes companies
18 years to come up with packaging designs. They have to do
19 testing. They have to find the source. And I think all
20 that takes time.

21 So I believe even if you would go to that level,
22 which I am not suggesting that you do, that you need to
23 build in some sort of time line for companies to actually
24 be able to change their packaging design.

25 Also I will add on the labeled volume, I

1 understand that you said that it's not -- you don't
2 believe it's the intent of the law the way the regulations
3 are currently set up. That's different from what the
4 statute says. You may believe there's an intent they
5 didn't mean it that way. But when you read the statute,
6 it provides that you can look at the capacity of the
7 container. And I believe that when you look at
8 five-gallon containers, the capacity of them exceeds five
9 gallons. And that any changes to this I believe would
10 have to be done statutorily.

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
12 LEAON: Okay. Well, perhaps we need to first begin with a
13 reading of the statutory definition, which I will do. A
14 rigid plastic packaging container means any plastic
15 packaging having a relatively inflexible finite shape or
16 form with a minimum capacity of eight fluid ounces or its
17 equivalent volume of five fluid gallons for its equivalent
18 volume that is capable of maintaining its shape while
19 holding other products including, but not limited to,
20 bottles, cartons, or other receptacles for sale and
21 distribution in the state.

22 I think the definition that we're proposing is
23 entirely consistent with what's required in statute.

24 I do not believe that we are opening up the
25 universe of regulated containers in an unreasonable way.

1 The change that we're proposing on closure will bring in
2 additional containers. We currently have containers that
3 are heat sealed that are excluded from this definition
4 because they're not capable of reclosure while the
5 identical container which is capable of multiple reclosure
6 is regulated. We feel that is an equity issue that needs
7 to be addressed that those containers are legitimately and
8 should be regulated under this law. And this change is
9 appropriate and necessary given that fact.

10 We did look at eliminating the closure
11 requirement entirely. We did conclude after looking at
12 that that it would open up the regulation to far to many
13 containers that were not intended to be regulated as
14 packaging under this law.

15 So we did reject that option and what we've felt
16 was a good compromise and going with capable of one
17 reclosure to specifically address that issue.

18 The container examples that we showed on the
19 slides we think are legitimately regulated. This is a
20 producer responsibility law. It's been on the books since
21 1991. And we feel that given the problems associated with
22 the low recycling rate for plastics, the issues associated
23 with litter for plastics, that it is necessary to
24 effectively enforce this law to address those issues and
25 support the collection infrastructure and processing

1 infrastructure that has been developed as a result of this
2 law. We believe these changes will help to accomplish
3 that.

4 MR. POLLACK: Mike, Randy Pollack again.

5 One of the issues of what you said is talking
6 about the littering of plastic. One of the parts that's
7 missing out of this equation is, where are the local
8 governments? Because you need curbside recycling in order
9 to pick up this.

10 So I would disagree to say that we're going to
11 sit here in this room and resolve the plastic litter
12 problem or the recycling problem I believe is a fallacy if
13 we don't have local governments in this room discussing
14 how can we recycle this stuff, how can we collect this
15 stuff.

16 And I believe that's the other variable that's
17 missing here. And I know we invited local government to
18 participate here. But out of all the advisory group
19 meetings and in all the meetings we had throughout the
20 years, very rarely have we seen someone from local
21 government come to these meetings and participate. And I
22 believe that even before we can set up a program that's
23 workable, we need to involve local government, or else no
24 program is going to work.

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: Yes, comment in the room.

2 MS. LIVINGSTON: Carol Livingston, Soap and
3 Detergent Association. Your proposal to include the
4 volumetric measure of container goes beyond what the law
5 permits. I think it's difficult to state that the
6 Legislature intended something that it didn't codify in
7 law when it's clear that there's a cut off at the five
8 gallon rate. And it doesn't say five gallon one ounce or
9 five gallon two ounces. It cuts off at five gallon. And
10 going beyond that by measuring it volumetrically is going
11 beyond the law.

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
13 LEAON: Okay. Well, I think again if you look at what is
14 the intent of the law, the intent of the law is to divert
15 plastic packaging from landfilling. And I think in our
16 view the regulation is consistent with the statutory
17 intent to regulate products and packages that are eight
18 ounces and five gallons.

19 Certainly, many of those five-gallon HTPE pails
20 or buckets certainly aren't recyclable and can't contain a
21 high level of postconsumer material, because bringing
22 those containers under the rule of the law I think is
23 consistent with the intent of the statute to divert
24 materials from disposal.

25 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: This is

1 Bill Orr again.

2 I think we can look into that issue further. But
3 when we're talking about statutory intent, I think part of
4 what we're talking about is parameters that were
5 identified eight ounce to five gallons as the Legislature
6 was looking at it, they were looking at something that was
7 basically larger than a single use container. That's
8 where the eight ounces came in on the lower end.

9 And I think they didn't want to include
10 industrial package. That's where the five gallon cut-off
11 came in. I think basically it was intended to focus on
12 consumer packaging in that range. And I think we can look
13 into that further. As I understand it during the
14 statutory process, that was the basic parameters that were
15 being looked at.

16 MR. POLLACK: Randy Pollack.

17 I just wanted to add that this law deals with
18 containers and not product. And I think when you read the
19 statute that it says any maximum capacity of five fluid
20 gallons, to me it's the maximum capacity of the container,
21 not of the product. So therefore, that's why we believe a
22 review should be taken, it should require a statutory
23 change.

24 MS. LIVINGSTON: Carol Livingston, Soap and
25 Detergent Association.

1 I think if the Legislature had intended to cover
2 five gallons then it should have said that. I don't think
3 it's the prerogative of the Board to expand the definition
4 by saying that's what they intended. They intended to
5 cover things that were about five gallons as the maximum
6 capacity. If the Legislature intended something
7 different, it didn't codify it into law, and the Board may
8 not go beyond the codification.

9 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
10 LEAON: Well, the Board does have the authority to make
11 the statute more specific and more clear. But we'll
12 certainly take that under consideration and look at that
13 issue.

14 BOARD ADVISOR PECK: Chris Peck, Gary Petersen's
15 office.

16 I'd like to back up to a comment Randy made
17 earlier relative to the statute definition of rigid
18 plastic packaging container. And I think that the problem
19 here really is in drawing a line between what a rigid
20 container is and what a flexible container is. And
21 unfortunately, the statute is written with the term
22 relatively inflexible in it. And that's a very subjective
23 term of art.

24 And it would seem to me that the Board could
25 provide some clarity here by further defining what

1 relatively inflexible means. For example -- this is just
2 off the top of my head. Some percentage of, you know,
3 flex is capable beyond the original design. If the
4 container exceeds that, whether it's 10 percent or 20
5 percent, I don't know, that would be a flexible container
6 rather than a rigid container.

7 But it seems to me the term of art which is
8 relatively inflexible is really sort of the crux of many
9 of the difficulties the Board has had in determining what
10 packaging is covered by the law and what is not over the
11 years.

12 MR. LARSON: Michael, George Larson.

13 I want to make a comment on page 9 under the RPPC
14 definition subsection 1 where it says the package is
15 capable of at least one closure. It didn't say reclosure,
16 including but not limited to that occurring during the
17 production process.

18 So while I think I made it clear my clients are
19 not in favor of removing the capable of multiple reclosure
20 option, this language really just doesn't make sense from
21 this perspective that any product sold in a package be it
22 plastic or any other material, is going to be closed at
23 least once during the manufacturing process.

24 So it sort of is counterintuitive that every
25 package then now is included. So to say any package

1 manufactured that's closed one time including the
2 manufacturing process doesn't really accomplish anything.

3 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

4 LEAON: Let's pull up our examples.

5 --o0o--

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

7 LEAON: And the issue we're trying get to with this
8 change -- bear with me a moment. Where we have clam shell
9 or hinged packaging where we have one package that is
10 capable of multiple reclosures, but virtually identical
11 package which has been sealed during the manufacturing
12 process is not regulated. I think clearly this is an
13 equity issue. If one container is capable of multiple
14 reclosure, I think we need to address that issue and
15 capture the other container which is identical.

16 And, you know, I think the manufacturers are
17 aware of this. It's certainly a way to avoid a particular
18 product line from being regulated that should
19 appropriately be regulated under the law. I think this
20 change is appropriate.

21 MS. LIVINGSTON: Question. Back to your picture
22 example. Is the heat sealed, is that capable of one
23 closure? Is that --

24 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

25 LEAON: Yes. Heat closed and sealed during the

1 manufacturing process.

2 MR. LARSON: Michael, along the lines of equity,
3 if you could put slide number 21 up. This shows the -- I
4 believe although it's blanked out, and I appreciate that,
5 the second container on the list is an ITW product, which
6 might be one I brought by as an example, is labeled "not
7 for sale in California." And the reason it's not for sale
8 in California is that it would not comply with this law.

9 If I take you to Wal-Mart, the cleaning aisle
10 products are fully stocked with this container under
11 different product manufacturers' names that do sell the
12 product in California. So that to me is not equity.

13 MR. BERUMAN: We just tried to include as many
14 different examples of wipe containers we had available.

15 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
16 LEAON: You have to say that again for me, George. I'm
17 not clear where the equity issue is here.

18 MR. LARSON: We got fined for selling this
19 container and product in California. It continues to be
20 sold under other manufacturers' names today. So we can't
21 do business with this particular product in a
22 polypropylene container.

23 Other product manufacturers can sell their
24 product in the same polypropylene container that doesn't
25 comply with the law, but nothing is happening to them.

1 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

2 LEAON: Well, again, you know the certification process is
3 essentially a spot check. We're only doing maybe 100
4 companies each certification cycle. The law requires
5 manufacturers to be in compliance with the law at all
6 times. So they may be selling those products and we
7 haven't captured them through a certification yet. If we
8 were to include one of these other companies under
9 certification, they would be subject to the same law and
10 its application as with ITW.

11 MR. POLLACK: Mike, Randy Pollack.

12 I just want to make a suggestion that I agree
13 that we need to level the playing field especially with
14 some of the caulking. For example, where one is, you
15 know, reclosable one, one you have to snip off the top.

16 Our major concern among the retailers is the vast
17 expansion of the universe. If we had certain definitions
18 I think everybody would agree detergent bottles, RPPC,
19 very clearly. A cleaner, an RPPC. I think it's very
20 difficult when we start looking at all of the other
21 different packaging out there.

22 And you know, I would really welcome the
23 opportunity of getting a bunch of folks together to sit
24 down and try to figure out exactly, staff of the Board
25 members, what is an RPPC. You know what is flexible.

1 What is sort of plastic is being used in these RPPCs. Are
2 there other ways to address this issue? And because I
3 think everybody has the objective of one trying to use
4 less plastic. Additionally, trying to make sure whatever
5 plastic is being used that it gets recycled. I think we
6 all had the same common goal here. I think it's trying
7 figure out how best to reach it.

8 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

9 LEAON: Okay. Thank you, Randy.

10 Any other comments or questions on this
11 definition? Folks on the phone? Again as was said
12 earlier, this really probably is the most important
13 definition in the law.

14 Okay. Why don't we take a break here and let's
15 reconvene at 20 'til.

16 (Thereupon a recess was taken.)

17 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

18 LEAON: This is Mike Leacon. I would like to reconvene our
19 meeting, if everyone could take their seats. Can you
20 check outside in let people know we're going to get
21 started. For those of you on the phone, it will be just
22 the moment, and we'll be getting started again.

23 Let's go ahead and reconvene our meeting. Do we
24 still have folks with us on the phone?

25 MS. MOORE: Yes.

1 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
2 LEAON: Okay. Given that we're going to get through
3 probably the key things we need to discuss today, which
4 are the definitions, I think the other regulatory changes
5 will probably go pretty quickly. So depending on how far
6 get, we may just push on and perhaps be able to wrap up
7 our meeting today not too far into the lunch hour. So
8 we'll see how things go and how we progress. But we may
9 be able to wrap this up early today.

10 Okay. We were discussing the definition for
11 rigid plastic packaging container. And before we leave
12 that particular definition, there is one more issue
13 surrounding that definition that we should cover. And
14 again, I think it's another equity issue. And this
15 surrounds the question of metal handles.

16 As part of the regulations we had -- as part of
17 the current regulations, we exclude containers with metal
18 handles as being an RPPC. In hindsight, I think this
19 again introduced unlevel playing field. If we can take a
20 look at the containers that are on the screen in the room
21 or on your PC --

22 --o0o--

23 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
24 LEAON: -- we see virtually identical type of containers.
25 One with a plastic handle, and one with a metal handle.

1 The one with a plastic handle would be regulated. The one
2 with the metal handle would not.

3 So we want to address this issue in the revised
4 regulations and delete the language that would exclude an
5 RPPC from being non-regulated if it had a handle.

6 So again, a regulatory or equity issue that we
7 think we need to address. And again, this change will
8 help to support the intent of the law to support markets
9 for PCM. These types of packaging, certainly if they're
10 HTPC pales or buckets, are good use for postconsumer
11 material.

12 MR. POLLACK: Mike, Randy Pollack.

13 I would just say I believe a change in this area
14 removing the metals handles would have to be done
15 statutorily. Thank you.

16 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

17 LEAON: Okay. Thank you, Randy.

18 And looking at the statutory definition, I'm just
19 curious as to what's your basis for that conclusion.

20 I'll read the definition.

21 "RPPC means any plastic packaging having a
22 relatively inflexible finite shape or form with a minimum
23 capacity of eight fluid ounces or its equivalent volume
24 and the maximum capacity of five fluid gallons or its
25 equivalent volume that's capable of maintaining shapes

1 while holding other products, including but not limited
2 to, bottle, cartons, and other receptacles for sale or
3 distribution in the state."

4 I think the exclusion rests solely on the
5 regulation. I don't see a need for statutory change here.

6 MR. POLLACK: Mike, Randy Pollack.

7 My response would be is I'm not sure where in the
8 regulations when it says entirely made of plastic. And I
9 guess the contention would be is that the metal handle is
10 part of the packaging. So therefore, that's the reason
11 why it would have to be a statutory change.

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
13 LEAON: Okay.

14 Any other questions or comments? Another comment
15 in the room.

16 BOARD ADVISOR PECK: Chris Peck again.

17 Just thinking a little bit more on this issue
18 particularly as we get to the five-gallon buckets and the
19 labeled volume versus the fluid volumetric capacity. It
20 seems to me that we're going to wind up in a situation
21 conceivably where we have an equity problem here in terms
22 of level playing here.

23 If there is no labeled volume or label capacity
24 on it, you've got exactly the same container, one's in,
25 one is out because of the way it's labeled, and I think we

1 probably want to avoid that. In my mind, it would look
2 better to use a strict statutory language that speaks to
3 the capacity of the container and not the labeled volume.

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

5 LEAON: Okay. Thank you, Chris.

6 Do we have any other comments on RPPC definition?

7 Yes, comment in the room.

8 MR. NORTON: Hi. I'm Howie Norton. And I'm the
9 largest producer of high-density polypropylene five-gallon
10 pales in the state of California. So I appreciate very
11 much those that are here and that are questioning some of
12 the validity of the proposed changes.

13 But one thing that nobody has talked about is
14 that my industry's concern about mixing 25 percent of
15 recycled resin with prime resin and meeting the
16 requirements that we are required to meet in the life of
17 the container -- and when I say life of the container,
18 sometimes these containers will be in warehouses and
19 shelves for two or three months.

20 We are very concerned about stress cracking. We
21 have managed to get ourselves to a point that we have
22 confidence in 10 percent recycled resin for the state of
23 Wisconsin. But our experimentation with 25 percent resin
24 of an unknown source or consistently changing quality has
25 made it very, very difficult in stress crack tests. And

1 stress cracking is a very difficult thing, because it's
2 very hard to test for during the manufacturing process,
3 because the stresses build up as the container ages. And
4 you can have one that passes our stress test during that
5 manufacturing, but a year or two later, especially if it
6 has ultra violet light exposure, it changes considerably.

7 And so my problem is that the whole theory of
8 jumping from 10 percent is relatively accepted in the
9 country now to 25 percent, 250 percent increase in the
10 percentage, is unreasonable. And all of the trucking, ATA
11 and CTA, and American Trucking, National Motor Fleet, UPC,
12 these people should all be brought into the circle.

13 And we should discuss with them the possibility
14 or probability of stress cracking and common carrier
15 trucks with general fleet and what happens when five
16 gallons of oil that's relatively high in the load cracks
17 from top to bottom and the oil oozes out all over carpets
18 and food products and TV sets and whatever.

19 So this is my main concern is to try to figure
20 out how to handle a 25 percent recycled and for us not to
21 have the exposure and for the general fleet companies not
22 to have the exposure. Thank you.

23 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
24 LEAON: Thank you, Howie.

25 The 25 percent requirement is actually in

1 statute. So that's not something we have discretion over.

2 In regard to finding appropriate quality
3 material, I'd be very surprised if you can't find a
4 processor that would be able to supply you with the
5 quality material that will perform well in those
6 containers.

7 In addition, it is incumbent upon product
8 manufacturers to do that and locate a supplier that you
9 can work with in that regard.

10 Also, the new statute does provide product
11 manufacturers with greater flexibility. If you can't use
12 25 percent in the pales, the new compliance option does
13 allow for the use of postconsumer material and other
14 products or packaging that could be credited to those
15 containers to make up the difference.

16 MR. NORTON: Don't forget that, you know,
17 California is always out in front of these things that are
18 bad. But don't forget that the other states will
19 eventually follow. When that happens, there is no
20 advantage in this, because you're playing with everybody
21 on it.

22 I guess there's a temporary release to us there
23 that we can work -- take a lot of work. But we can work
24 around and control and may be down to 15 percent or 10
25 percent by what you're talking about.

1 If the other states were to follow suit, I think
2 it's only prudent that you pass a law that you think can
3 be adopted by all states without massive complications.
4 As the other states follow suit, we would lose the ability
5 to do this.

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
7 LEAON: Right. Well, I think California has already had a
8 nation-wide impact with the amount of products that are
9 sold in California. It's been our experience that it's
10 already had that impact, regardless of whether the other
11 states follow suit and adopt similar laws.

12 Oregon has a law on the books now. New Jersey
13 has been considering a law. I'm not sure what the status
14 of that law is. As far as I know, it has not been adopted
15 to this point. But California's law does have a national
16 impact, certainly.

17 Do we have any questions or comments on the phone
18 on this issue? Okay. Thank you for your comments, Howie.
19 Any other comments in the room on RPPC definition up?

20 Okay. The next definition I would --

21 --o0o--

22 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
23 LEAON: -- like to cover is the source reduction
24 definition.

25 I know there's been a lot of frustration on this

1 particular definition. However, in looking at the
2 comments that we've received on this, whether it's in
3 regard to using a different resin type for source
4 reduction or switching to a different material type of
5 source reduction or on concentration of product, you're
6 really bound by what's in the statute. And so the changes
7 that have been asked for I really don't think we have the
8 discretion to make those changes as they would be required
9 of a statutory change.

10 All we've done really with this definition -- we
11 haven't changed the option, per se. We just clarified
12 that the obsolete language that's no longer operative
13 governing the period from 1991 through 1994, we've deleted
14 that and added clarification that in order to comply under
15 the source reduction option, manufacturing has to report
16 for a twelve-month period.

17 In regard to switching resin types, that's been
18 brought up by several manufacturers now. But again, I
19 think the statute clearly prohibits claiming source
20 reduction if the manufacturer is switching to a resin type
21 that is less recyclable or less capable of containing PCM.
22 As I understand, there's frustration around that. And I
23 can well understand that.

24 Also in regard to concentration of product, we
25 had some comments there about that, allowing manufacturers

1 that have previously been using PC move to help comply
2 through that option is costing some markets share for PCM.
3 And again, I fully understand their frustration around
4 that aspect. But that is an option that is provided in
5 statute.

6 Switching material types, if the manufacturers
7 switched to a non-plastic material type that cannot be
8 credited towards source reduction. However, if a product
9 would be sold without a package, and in that case the
10 reduction can be credited towards source reduction.

11 So again, all of those issues are really
12 statutory changes.

13 Be happy to hear any comments regarding the
14 source reduction definition. But unfortunately, I don't
15 think there's much we can do through regulation to address
16 those issues.

17 MR. POLLACK: Mike, Randy Pollack.

18 Going back to about changing different resins,
19 and I assume that we're looking at, if we're looking of
20 Public Resources Code, we are looking under the 14301(c)
21 or 2(c). Where it says packaging changes that adversely
22 effect the potential for the rigid plastic packaging
23 container to be recycled or be made of postconsumer
24 material --

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: Yes.

2 MR. POLLACK: I assume that's what's being relied
3 upon when we're looking at the regulations.

4 I would argue that I believe that is open, that
5 that statement does not mean that you cannot switch to
6 something that is less recyclable.

7 To me, I interpreted that it means that you have
8 to switch it over to something that is recyclable that you
9 just can't go to something that is not currently in the
10 wastestream being recycled.

11 So I believe that staff has the opportunity here,
12 and I believe they have the authority to sort of change
13 the language where we could say that if someone is going
14 to use source reduction moving from one resin type to
15 another, as long as that resin type is recyclable, I think
16 that's permitted under the law.

17 And I think that's going to achieve a couple
18 purposes for you. I know of one company, for example, who
19 wanted to switch from an HTPE to a polypropylene and do
20 like a 20 percent reduction, which would be huge. That
21 would be saving a lot of plastic. But their concern is
22 that they may not get credit for that if they do make that
23 change.

24 So I believe that -- or I would ask that the
25 staff and yourself take another look of this. Because I

1 believe that there is an opening here for the staff to
2 craft a regulation that would be consistent with the
3 statute. And I think that what that does is that would be
4 a benefit for a lot of folks out there.

5 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
6 LEAON: Okay. We will look at that issue again, Randy.
7 And we'll certainly consult with our Legal Office
8 regarding if we have the authority to make that sort of
9 interpretation.

10 MR. POLLACK: Thank you.

11 BOARD MEMBER DANZINGER: Mike, let me ask you a
12 quick question. Mike, Jeff Danzinger. Just a quick
13 follow up question on Randy's comment.

14 So what you're saying up there with that third
15 bullet is the law currently indicates, you know, you're
16 doing source reduction. You're want to switch to another
17 material, another resin, to get the source reduction
18 credit. But it can't be less recyclable.

19 So let's assume, for instance, that at any given
20 point in time there are like, say, half a dozen acceptable
21 resins out there to use for it. Does this mean that at
22 that point in time only the most recyclable of the six is
23 the available option, even though you might have again
24 four or five others that are also usable.

25 Because, you know, there's only one by that

1 definition that's not less recyclable. And that's the one
2 at the very top. So I'm trying to figure out how -- if
3 that's something that we currently go by, how do we manage
4 that particular restriction?

5 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

6 LEAON: I think Bill Orr is going to respond.

7 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: He's
8 jumping up to comment. This is Bill Orr.

9 Actually, I think you raise a really good
10 question, Jeff. And we've actually had some internal
11 discussions about defining recyclable. And so I think
12 between now and our next draft we're going to need to come
13 up with a definition.

14 There's different ways to look at what recyclable
15 is. One is technically recyclable, like not considering
16 economics.

17 One of them might be using something like a
18 Federal Trade Commission definition of recyclable, which
19 actually looks more toward the percentage of jurisdictions
20 within a state that actually recycled the material. So
21 that would actually get more into looking of whether from
22 a practical programmatic standpoint the material is
23 recyclable. So we can look at the options for defining
24 recyclable and make some proposals in our next draft.

25 BOARD MEMBER DANZINGER: Thanks, Bill.

1 But again, the point aside from what we operate
2 by to determine what is recyclable and what's a certain
3 degree of recyclable, that still leaves this notion of,
4 you know, less recyclable. So, you know, you could have
5 one material. And whatever definition we use and it turns
6 out that this, you know, resin X is the most recyclable by
7 definition of the percentage of it that's recycled or
8 accepted by jurisdictions or whatever.

9 But then you might have again even by that same
10 definition a handful of other resins that are also
11 recyclable. They're just not at that point in time
12 perhaps being recycled at the same volume. So we
13 certainly wouldn't want to discourage folks from using
14 those resins and build up the use of those resins as well.

15 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

16 LEAON: Thank you, Jeff.

17 Any comments on the phone?

18 MR. ALEXANDER: Mike, this is Steve Alexander.

19 I think as you know, we have significant concerns
20 with where this is going. We will take the rest of today
21 to begin to address our concerns. We will address them to
22 you more consistently in writing with potential language
23 for you to consider.

24 Overall, our concerns are that the changes from
25 the postconsumer recycling market seem to make source

1 reduction the only option for folks. But the vast
2 majority would be the most preferable option to the form
3 that we think it would have a significant detrimental
4 impact that not only the growth and development, but the
5 sustainability of the postconsumer plastics recycling
6 marketplace, which as you know was given a lot of
7 development that was in response to the original enactment
8 of this law back in the mid 90s.

9 So we've made these comments to you in the past.
10 And we will be much more specific going forward. But we
11 do have significant concerns with where this is going.

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
13 LEAON: And Steve, those concerns cover both, I would
14 assume, both the recyclability issues that we're
15 discussing and the concentration of product.

16 MR. ALEXANDER: Certainly, they cover those,
17 Mike. And I mean, frankly, they also cover -- and we've
18 discussed this in the Advisory Group the fact that really
19 what you're talking about with source reduction, you're
20 talking permanent opt-outs for packaging today. And
21 frankly, the technological developments are such that a
22 package that is introduced today versus 1996 can take
23 advantage of the lot of new technologies.

24 And I think that's something that we feel needs
25 to be considered as well going forward. So we will be

1 getting very specific with you fairly shortly.

2 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

3 LEAON: Okay. Thank you, Steve.

4 I think I did want to comment briefly on the
5 recyclability issue and just from a practical standpoint
6 how this has been an issue in the certifications where we
7 do get a request for a claim for source reduction based on
8 switching from HTPE to polypropylene, which is the example
9 that has been cited here.

10 And our concern is that clearly that there are
11 better markets for HTPE than polypropylene. And there's a
12 much more developed HTPE market for postconsumer HTPE than
13 there is for polypropylene. So again, in interpreting the
14 statute and looking at that restriction, you know, we feel
15 that clearly that that's what was being contemplated.

16 MS. MOORE: Can you speak into the microphone a
17 little better? It's very hard to hear you.

18 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

19 LEAON: How's that?

20 MS. MOORE: Better.

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

22 LEAON: I was just trying to make a point that in
23 practical application the issue that we're trying to
24 grapple with is switching from an HTPE container to a
25 polypropylene container. And I think clearly that is the

1 situation that the statute was contemplating when this
2 restriction was added. We don't want to adversely affect
3 postconsumer material markets by switching to a container
4 that's not going to be collected and for which there is
5 not going to be postconsumer material available for it.

6 So I think that's the challenge that we have in
7 writing the regulations and being consistent with that
8 statutory requirement. And staff's opinion is that we
9 need to adhere to that restriction to make sure that we do
10 support postconsumer material markets in California, and
11 that we don't have more containers going to landfill
12 instead of getting collected for recycling.

13 MR. YEDIDSION: This is Parham Yedidsion.

14 I have a comment to make on this as well. I
15 think on an overall basis we are -- I'll for myself. I
16 think source reduction is an option that should be there.
17 It is something we do want to encourage manufacturers. I
18 think manufacturers in general are encouraged to do that
19 anyway, because the less material you use, the more
20 savings you have in your product. Just an added bonus.

21 However, even the talk of something like this has
22 sent tremendous implications through this industry over
23 the last few months, especially the last month. And the
24 main thing is subjective opinion of different
25 manufacturers or container manufacturers is what is source

1 reduced and what is not source reduced. Nevermind what
2 the definition is being proposed is accurate or not.

3 Regardless of how this issue gets settled in
4 regards to staff's opinion or legal's opinion as to how
5 wide they can take that paintbrush and paint that
6 definition or how narrowly, I think you would be wise to
7 have something in here that says -- that takes away the
8 subjectiveness. That you are able to say, look, if you
9 have a product or container that you feel that is source
10 reduced and that qualifies for that option, then submit it
11 to the Board and let us approve it prior to taking action
12 and saying oh, it's source reduced.

13 And it really goes back the something George
14 Larson was saying about one of the products. It could be
15 any product. But one manufacturer determines that I'm
16 abiding by the law and I don't think it's source reduced.
17 And now that we're one to three who so far haven't even
18 complied with the law decide I qualify under this option
19 and just go their merry way.

20 Take away the subjectiveness. Make it an even
21 playing field. If you've got a product that you feel
22 complies with that option, then have a forum or something
23 that's sent to the Board. Let them review it. Let them
24 do the calculations and so on. And let the Board formally
25 say, yes, this product does apply.

1 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

2 LEAON: Thank you, Parham.

3 MR. BERUMAN: This is Jerry in the room.

4 I think it's important to point out for source
5 reduction, the statutory definition -- the option is tied
6 with the product. It's not the container alone. So it
7 has to be the product offered in the container. So if
8 container manufacturers or suppliers are offering a
9 source-reduced container on its own, you have to be
10 careful that you're tying it to the product itself. You
11 know, I just wanted to point that out that the statutory
12 definition does say the product for which the container is
13 being used is the source reduction.

14 MR. YEDIDSION: This is Parham again.

15 I agree with you. All I'm saying is that there
16 are companies and people out there who will use their own
17 subjective opinion as to whether it is or it is not. So
18 please take away that subjective point.

19 MR. POLLACK: And Mike, this is Randy Pollack,
20 since we're just going on on source reduction.

21 One of the big issues out there for companies is
22 the whole area of source reduction when you're introducing
23 a new product. Because it is very difficult to
24 substantiate that your container is as light as possible
25 when you introduce it, because you have nothing to compare

1 it to.

2 I'm not quite sure how we get around that. But I
3 can tell you in dealing with manufacturers out there, that
4 is a huge issue. Because when you look at it, and I think
5 we've all talked about it in this room, you know,
6 manufacturers should make it ten percent heavier and then
7 reduce it by ten percent, which no one is going to do
8 that. But if you would have done that, you would be in
9 compliance with the law, as opposed to doing making it the
10 lightest possible at the onset.

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
12 LEAON: And I understand the challenge with that, that new
13 packaging will be introduced at the lightest weight
14 possible.

15 But the law does allow a comparison against other
16 packaging that's on the marketplace. And I think that
17 would be the avenue to pursue. If there's not similar
18 packaging, that does leave the manufacturer in a difficult
19 place. And I think at that point you need to look at
20 other options, especially the new compliance options,
21 where there could be a credit applied to other products or
22 packaging to account for that deficit, should that product
23 and container line not be able to comply individually.

24 MR. POLLACK: And Mike, Randy Pollack.

25 Just following up, I think this is where, as

1 we've been discussing that it creates a lot of difficulty,
2 is trying to locate a container, obtaining that
3 information of what it's made out of. And then we may run
4 into this situation if it's, say, just PET and this one is
5 HTPE, is that less recyclable than the other one and we
6 couldn't count that. So it brings in a whole variety of
7 issues as to what we are actually looking at. I think
8 some sort of more definition around it would be very
9 helpful.

10 And with some containers, it's almost
11 impossible -- if you're looking at clam shells, it's
12 probably impossible -- It's very difficult to find a light
13 container clam shell as opposed to a jar or a bottle.
14 Thank you.

15 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
16 LEAON: Okay. I think you bring up a good point on
17 education and outreach and providing assistance to the
18 regulated community. And I think that's something we
19 should look at on that particular issue, that perhaps we
20 could be of assistance and helping to identify the similar
21 containers.

22 MR. O'GRADY: This is Bill O'Grady, Talco
23 Plastics.

24 Just as a general statement and I think from a
25 standpoint of subjectivity, I think what we're trying to

1 say here or what maybe Steve Alexander, myself, and Parham
2 are concerned about is that maybe that the regulations
3 focus or emphasize both source reduction options and
4 postconsumer usage, postconsumer material usage in an
5 effort to achieve compliance and look at them both equally
6 as opposed to from a standpoint of a permanent opt-out or
7 so.

8 So I think that from a general statement
9 standpoint, I think that's what we would request or Talco
10 Plastics would request the staff consider.

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

12 LEAON: Okay, Bill. We will take that into account.

13 Any other comments on the phone?

14 MR. YEDIDSION: One question. This is Parham
15 Yedidsion again.

16 I asked this last meeting. Maybe I'm missing it.
17 Is there a definition for product?

18 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

19 LEAON: For a product?

20 MR. YEDIDSION: Uh-huh.

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

22 LEAON: Not for product. Product manufacturer.

23 MR. YEDIDSION: Part of what we're saying in here
24 is in regards to a particular product. So one of the
25 ambiguities -- I think it's in one of the areas we

1 definitely, I have a major concern with in regards to
2 source reduction and subjectivity again, is the product a
3 brand? Or is it the chemical composition within the
4 bottle or the package?

5 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

6 LEAON: Well, it's whatever the package holds. Now, the
7 statute does exclude certain products including food and
8 cosmetics.

9 MR. YEDIDSION: But let's assume for a second
10 you're talking about a cleaning solvent. Is it the brand?
11 Or is it the chemical composition?

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

13 LEAON: Well, the product itself doesn't fall into the
14 exemption. So in that case, the container becomes
15 regulated at that point.

16 MR. YEDIDSION: So now it's the container, not
17 necessarily the product?

18 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

19 LEAON: Well, the container to be regulated has to be sold
20 holding a product.

21 MR. YEDIDSION: Correct. But when you want to
22 come out and say look, I'm source reducing, this container
23 I used for brand X, and now it's brand X prime. And the
24 container has changed.

25 Again, there is a tremendous amount of -- there

1 is enough ambiguity there that if left unchecked it leaves
2 and has, in fact, left manufacturers with subjective
3 opinions, most of which they have begun acting on.

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

5 LEAON: I think I understand your point. For purposes of
6 the source reduction definition, if a manufacturer was
7 going to comply through source reduction, the container
8 would have to hold the same product and the non-source
9 reduced container as well as the source reduced container.
10 You have to make a direct comparison.

11 MR. YEDIDSION: Same product?

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

13 LEAON: Yes. You can't have a container line and, say,
14 discontinue that container line, you know, that held a
15 particular product and claim, I have this other container
16 line holding a different product, but the container is
17 smaller, therefore I've source reduced. It doesn't work
18 that way. It has to be direct comparison with the same
19 product.

20 MR. YEDIDSION: So in essence, it let's say the
21 example that was brought up before. The concentrated
22 packaging or concentrated product does not fall under the
23 category of source reduction?

24 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

25 LEAON: Well, it would if it's the same product. Say it's

1 a detergent and previously it was sold in a container and
2 you got, say, 50 loads out of that container, and now
3 they've concentrated the product in the same container but
4 now you're getting 75.

5 MR. YEDIDSION: It's in the same container.

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

7 LEAON: Yeah. Because you've increased the per unit use
8 of that package. So in theory, you shouldn't have to --
9 the manufacturer shouldn't have to sell as many
10 containers.

11 Does that answer your question, Parham?

12 MR. YEDIDSION: It somewhat does. Again, I'm
13 still confused what I was saying. I would definitely push
14 you guys towards approving any requests for that
15 compliance option.

16 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

17 LEAON: Okay. And functionally the way that would work is
18 we would capture that through certification. If we
19 include a manufacturing certification they're claiming
20 source reduction, we will certainly verify those claims
21 through the certification process. But the only way for
22 us to do that is through a certification.

23 Though I should say -- and we'll get into this in
24 more detail later -- is that the process that we're
25 proposing for new certification does include sort of a

1 two-tiered or two-step process in which we'll provide an
2 initial notification to companies once we've identified
3 them that you're subject to this law.

4 At that point, offer them education and
5 assistance. And if they have any specific questions on
6 the container lines, and whether those container lines and
7 products in the container makes it regulated, we could
8 certainly work with them at that point prior to them being
9 included in the certification.

10 Okay. Any more questions or comments on source
11 reduction?

12 Are there questions or comments on any other
13 definitions before we move on to container requirements?
14 Actually, we'll start with new compliance options.

15 Okay. Let's move on to page 33 in the
16 presentation.

17 --o0o--

18 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
19 LEAON: The afternoon section. We'll just follow directly
20 the regulations, and I think the agenda has it set out a
21 little differently. But we're already getting into the
22 material that we're going to cover in the afternoon. So
23 again we may be able to wrap this up early today.

24 What we want to cover is the new compliance
25 options under recent statutory changes. This includes a

1 single resin type recycling rate and use of California PCM
2 in non-RPPC products and packaging.

3 The certification processes which we've included
4 and built into the regulations, which I think will really
5 help with manufacturers being able to understand the
6 process better.

7 Also built in a container determination appeal
8 process. And made a couple changes to the section on
9 violations and penalties. One is a result of statute
10 which makes container manufacturers liable for penalties.
11 Also made a slight change in manufacturers' role for
12 modifying penalties.

13 --o0o--

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
15 LEAON: Okay. Let's move to the section on container
16 requirements 17944, which is on page 13 of your regulatory
17 packet. And we've made some changes to this section to
18 reflect the new statutory requirements.

19 Also made a change to clarify on the waiver
20 requirements. If a container receives or is approved for
21 a waiver, it does have to comply through other options.
22 So we spelled that out here.

23 Also included language regarding the single resin
24 type rigid plastic packaging container recycling option.
25 This is a new option provided under statute. Previously,

1 the statute and regulations included a compliance option
2 for recycling rate for product associater or particular
3 type of containers. If an industry segment were to step
4 up and conduct a study and demonstrate that those
5 containers were recycled at a 45 percent rate, that could
6 be used as a demonstration of compliance.

7 Similarly, we now have an option for a resin
8 type. Again, if through a study conducted by industry
9 with a methodology that would have to be approved by the
10 Board, it can demonstrated that HTPE or PET has a 45
11 percent recycling rate in California, that would be a
12 demonstration of compliance for containers made from that
13 particular resin type.

14 And effectively what that would do is individual
15 companies would no longer have to demonstrate compliance
16 for those containers, because there would be a recycling
17 rate compliance option for them.

18 We've also added language on the bottom of page
19 13, a reusable plastic packaging container is one that is
20 routinely reused at least five times. The reuse is to
21 store a replacement product sold by the product
22 manufacturer with an intent to replenish the contents of
23 the original container.

24 On the reuse and refill option, there has been --
25 it's been unclear I think to product manufacturers that

1 they have to offer a replacement product in order to
2 qualify under these options. It's not simply a claim that
3 the end user or the person who purchases the product may
4 reuse that package to store incidental things in the home
5 or in the place of work. The manufacturer actually has to
6 offer a replacement product and demonstrate that
7 replacement product is sold at five times the rate of the
8 original container.

9 --o0o--

10 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

11 LEAON: And then moving on to page 15.

12 BOARD MEMBER DANZINGER: Mike, can I ask you a
13 quick question?

14 I just want to ask you quickly, can you explain
15 what product associated RPPCs mean? I mean, I'm not sure
16 exactly what that means. We used to have that old 25
17 percent statewide, you know, and then you wouldn't do
18 certification. Is this like a product category specific
19 version of that? That is if all of the types of
20 containers across an industry are achieving 45 percent,
21 what would be an example of that?

22 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

23 LEAON: That's correct. For instance, motor oil
24 containers. If those were recycled at a 45 percent rate,
25 then all of those containers would be compliant to earn

1 that option. So if we're to do a certification, a
2 manufacturer could simply site that recycling rate and not
3 have to demonstrate compliance for its own individual
4 product lines with those types of containers.

5 BOARD MEMBER DANZINGER: So that means by
6 definition that would have to be an industry-driven
7 program?

8 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

9 LEAON: Yes.

10 BOARD MEMBER DANZINGER: Okay. Thanks.

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

12 LEAON: And moving forward with this program, I think
13 there are opportunities that this Board and industry
14 should be exploring on doing that.

15 Any other questions or comments on -- I guess I
16 should back up here. Either on the reuse refill or the
17 single resin type recycling rate?

18 BOARD MEMBER DANZINGER: Mike, is there a
19 distinction between product associated RPPCs and what you
20 have under 2B, particular type RPPCs?

21 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

22 LEAON: Yes. As you were alluding to, Jeff, the product
23 associated, it's tied to the product. It could be a
24 variety of containers that are used to sell that product.
25 A particular type would be a specific container.

1 So if we had a product manufacturer and industry
2 say that wanted to do a study and show this specific
3 container has a 45 percent recycling rate, they can also
4 conduct that study and then product manufacturers using
5 that container could use that recycling rate as a
6 demonstration of compliance without having to meet one of
7 the individual container compliance option, either
8 recycled content or source reduced.

9 BOARD ADVISOR PECK: Mike, Chris Peck.

10 I want to follow up on that because now I'm
11 confused. We actually define particular type rigid
12 plastic packaging container in the definitions as an RPPC
13 which holds a single type of generic product, such as milk
14 or detergent. Your explanation of the product associated
15 RPPC would seem to me to be the same thing. Your
16 reference was to let's say motor oil.

17 So I'm confused about the difference between
18 these two things then.

19 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
20 LEAON: Let me take a quick look at the definition to make
21 sure I get you accurate information.

22 MS. HOWARD: I think the difference is -- this is
23 Jan Howard with the Board.

24 I believe the difference we're talking about is,
25 in product associated, you're talking about a particular

1 type oil. Or let's say you have Kraft says all of their
2 Kraft mayonnaise in plastic containers is recycled at a 45
3 percent recycling rate. Whereas, the other one, that's
4 product associated.

5 Particular type would mean where you got all of
6 the milk industry says all of their HTPE milk
7 containers -- not just Crystal, but all of them are
8 recycled at a 45 percent recycling rate. So that's the
9 distinction between the two.

10 BOARD ADVISOR PECK: So we're drawing a
11 distinction between one option would be for a particular
12 product manufacturer to say 45 percent or more of our
13 containers are recycled versus across an entire industry
14 sector would be the particular type

15 MR. HOWARD: Yes.

16 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
17 LEAON: That is correct. I apologize for that. So Jan is
18 correct on that. And we've never had --

19 MR. HOWARD: No one has ever requested.

20 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
21 LEAON: No one has ever tried to comply through those
22 options

23 BOARD MEMBER DANZINGER: Oh, they haven't.

24 Does product associated, does that mean company
25 wide?

1 MR. HOWARD: Yes.

2 BOARD MEMBER DANZINGER: And particular type
3 means industry wide?

4 MR. HOWARD: Yeah.

5 BOARD MEMBER DANZINGER: I think I got it.

6 MR. YEDIDSION: This is Parham.

7 Jan, one more time. 2C is what?

8 BOARD ADVISOR PECK: Brand specific.

9 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

10 LEAON: Okay. Again, the product associated is specific
11 to a company, right, brand specific. And the particular
12 type would be industry, industry wide.

13 MR. YEDIDSION: What is 2C?

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

15 LEAON: 2C. What pages are you looking at, Parham?

16 MR. YEDIDSION: 13.

17 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

18 LEAON: The single resin type. That would be the -- and
19 this is one that was recently added by statute. This
20 would be for a particular resin type. HTPE, PET would
21 have a 45 percent recycling rate.

22 MR. YEDIDSION: That's the exact language from
23 statute?

24 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

25 LEAON: Let me look at the statutory language. Hang on.

1 MR. BERUMAN: Yes, it is the direct language from
2 statute.

3 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

4 LEAON: Okay. Any other clarification needed on that?

5 Okay. The next section would be 17944.1 on page
6 15 of our regulatory packet.

7 And this language is essentially statutory
8 language that we've added into the regulation. And under
9 this option, product manufacturers can use or credit use
10 of California postconsumer material in non-RPPC packaging
11 or products towards its compliance for its regulated RPPC
12 packaging.

13 So the manufacturer is still going to need to
14 know how much regulated packaging it has and what's the
15 weight of that packaging. And, you know, based on any
16 deficit it may have in regard to complying through the use
17 of postconsumer material, it can make up for that deficit
18 through the use of California postconsumer material.

19 Now, that can be either done directly by the
20 company internally, direct purchase of PCM to meet its
21 needs and using that PCM in other products or packaging,
22 or it can be done through third-party contractual
23 arrangement.

24 For example, if a separate company was using
25 California postconsumer material and a company regulated

1 under the RPPC law needed additional postconsumer material
2 to comply, it could arrange through contractual
3 arrangement with that other company to purchase the PCM is
4 using in other products or packaging and then credit that
5 use of California PCM towards it regulated containers.

6 All right. So let's open that up for discussion.
7 Any questions -- we have a question or a comment in the
8 room.

9 MR. CLAES: Gerry Claes with Graham Packaging.

10 This applies only to the product manufacturers.
11 The container manufacturer can not be essentially buying
12 these credits and using them across the containers that
13 they produce; is that correct?

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
15 LEAON: Well, the product manufacturer applies the credit
16 towards it regulated containers. However, it could work
17 with a container manufacturer through contractual
18 arrangement and purchase postconsumer material through
19 that contractual arrangement to be used by the container
20 manufacturer and then credit the PCM that's being
21 purchased towards it own regulated container lines.

22 MR. CLAES: Thank you.

23 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
24 LEAON: Comments or questions on the phone?

25 Okay. Well, let's continue.

1 --o0o--

2 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

3 LEAON: And a lot of the struck out and changes you see
4 are formatting changes.

5 The next section we should look at is Section
6 17945.2, compliance certifications. And this is where we
7 have built in our certification process in regards to
8 selection and notification of product manufacturers.

9 If you look at page 22 of your regulatory packet,
10 you can see the new language beginning at the top of page
11 22.

12 In paragraph one there at the top of page 22
13 deals with selection of product manufacturers to be
14 included in a certification and identifies a hierarchy.

15 And I should also explain that as far as product
16 manufacturer identification goes, we didn't actually build
17 that into the regulation. But the ways we identify
18 product manufacturers is through -- when we include a
19 company in a certification, we will look at its
20 competitors and identify them either to include in that
21 certification or future certification.

22 We'll do store surveys or marketplace surveys
23 where we'll go out into the stores and look at what
24 products are on the shelf. And we'll also do Internet
25 research, both to identify products offered for sale, but

1 also looking at the product manufacturer web sites to see
2 if they have products offered for sale in California
3 packaged in RPPCs. So that's how we go about identifying
4 them.

5 And what the regulation staff contemplate is a
6 two-tiered certification process. Paragraph two talks
7 about product manufacturers will be notified at least
8 six months in advance before they are required to
9 demonstrate individual compliance with the law.

10 In addition to that, we are also now proposing
11 that once we have identified a store through our
12 manufacturer, through those surveys, we'll provide a
13 notice that we've identified you as offering product for
14 sale in California that's packaged in RPPCs. And at that
15 point, offer education and outreach to help them explain
16 the law, help them answer questions specifically about
17 what product lines may be regulated.

18 And we would give them at least one year prior
19 including them in a certification cycle. So effectively,
20 it really becomes minimum of 18 months before a newly
21 identified product manufacturer would be included in a
22 certification cycle. And arrive at the 18-month figure by
23 the one year that we're going to give them to work with
24 them to help them explain the law. And then on top of
25 that, if we were to put them in a certification, and get

1 the six-month advance notice they're going to be included
2 in a certification.

3 So I think this will help us to work with product
4 manufacturers and increase our ability to do education and
5 outreach through this two-tiered notification step. Okay.

6 Once we make a determination to do a
7 certification cycle, we'll look at the companies that are
8 in the established pool. And the hierarchal established
9 for collecting companies is as follows. Product
10 manufacturers that were non-compliant in the previous
11 certification cycle are automatically -- they're in the
12 next one.

13 The next tier would be product manufacturers move
14 from a previous certification for reasons including
15 corporate mergers or acquisitions and we'll roll those
16 forward to the next certification.

17 Then the newly identified product manufacturers
18 will be the next tier in terms of selecting companies to
19 include in the certification.

20 And I think at that point we had some comments on
21 the random selection. I think we need to include a random
22 selection process for the newly identified product
23 manufacturers and product manufacturers that were
24 previously certified. So for that group, once we get down
25 to that level, we'll use a random selection process at

1 that point.

2 BOARD ADVISOR PECK: Mike, Chris Peck.

3 This looks like -- and I didn't go back to check.

4 Looks like the policy that was adopted by the Board, what,

5 about three years ago. Are we, in fact, just codifying

6 that into the regulation here?

7 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

8 LEAON: Yes. We're taking the steps that we had laid

9 out -- that had previously been laid out in policy, and

10 we're putting them into the regulation. And I think that

11 should help to clarify for the regulated community how the

12 process is going to work.

13 And we've also tried to build in, as I said, a

14 two-tier step, which was not part of the previous policy

15 direction from the Board. That was in response to the

16 need to work with product manufacturers prior to putting

17 them into a certification to help them understand the law.

18 BOARD ADVISOR PECK: My recollection is also,

19 Mike, that when the Board had that discussion, the basic

20 policy was we were going to be looking at something like

21 100 companies a year. Are we thinking at all or want to

22 avoid specifying in the regulations what the universe or

23 the anticipated universe of our certification sampling

24 size would be?

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: I think we should leave that to the discretion of
2 the Board how many companies we want to put in a
3 particular certification. I don't think we want to put
4 that in the regulation.

5 But what this process allows us to do by having
6 this two-tiered where the first notification is you're
7 identified as selling regulated containers into the
8 California marketplace. Now you're in the pool, and at
9 some point in the future could be subject to
10 certification. Now we want to work with those companies.

11 And that can be a very broad notice. We can do
12 however many companies we want through that step. And I
13 think the more we do, the better. And that goes to again
14 towards leveling the playing field and making sure that
15 companies are aware they need to be in compliance with
16 this law.

17 MR. YEDIDSION: This is Parham.

18 Is there a minimum number?

19 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

20 LEAON: No. There is no minimum or maximum number of
21 companies in statute. And it's really at the Board's
22 discretion to decide how many companies they want to ask
23 to individually certify compliance with the law. Based on
24 our experience with implementing the law and some of the
25 initial certification cycles, we did up to almost a

1 thousand companies.

2 And it was just, given staff resources,
3 impractical to do that many companies in one certification
4 cycle. I think from a policy standpoint, it's better to
5 do a smaller number and complete those certification
6 cycles in a more timely fashion and then move on to the
7 next certification and bring in additional companies. So
8 that we're keeping current, I guess. And not working
9 three or four years behind trying to wrap up working with
10 a very large group of companies in any one certification.

11 MR. YEDIDSION: Is it advisable to have a
12 no-less-than number?

13 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
14 LEAON: Well, you know, the way we proposed it to the
15 Board and the policy that the Board adopted was that we
16 would limit it to 100. And that's what we did in the '05
17 certification. We did 100 companies. So practically
18 speaking, I think that that's a good number going forward
19 in any one certification cycle to do 100 companies.

20 MR. LARSON: Mike, George Larson.

21 First, I commend and support this new structure
22 relative to its very clear instructions to upcoming
23 requirements with specific deadlines which I think apply
24 unequivocally to new products that are introduced that are
25 identified.

1 My question and my comment I made in our ITW
2 letter was the priorities that are established for what
3 would drive inclusion. And I did make a comment that I
4 think random selection, which is your last choice, would
5 be -- or should be the first choice, because it continues
6 to bring a new stream, if you will, new blood into the
7 system. But for the rest of them, some of them read like
8 once you're caught in the net that's cast, it's going to
9 be very difficult to get out of it.

10 For example, Subsection C, if you're a product
11 manufacturer that's previously certified compliance, why
12 should that put you on the priority list to be asked to
13 certify again when, by your own acknowledgement, with 100
14 companies to be identified out of the tens of thousands
15 out there, you should be looking for different companies.
16 That's it.

17 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
18 LEAON: Okay. Yeah. I think conceptually I agree with
19 you, George. We want to identify new companies.

20 From the enforcement standpoint, companies that
21 are not complying I think we want to make sure they come
22 into compliance before they get a pass on the next
23 certification. And that's why that's the first option
24 under the selection process is non-complying companies are
25 automatically back in. But once companies have

1 demonstrated compliance, the policy that the Board adopted
2 said they would get a minimum of a one-year break. Did
3 we -- I'm not seeing that in the regulation. Did we
4 include that in the regulation, Jan?

5 MS. HOWARD: No.

6 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
7 LEAON: We did not include that in the regulation. I
8 think that's something we need to add that language. Once
9 a company has demonstrated compliance, it gets some sort
10 of hiatus from being included in the subsequent
11 certification.

12 BOARD ADVISOR PECK: Mike, Chris Peck, following
13 up on George's question.

14 He was referring to what I think probably is D.
15 It's labeled C, second C after newly identified product
16 manufacturers. It seems to me that manufacturers who have
17 previously certified compliance ought to fall into their
18 random selection process. It seems to me a little bit
19 redundant, if we give them a one-year reprieve and then
20 drop them back in the pool. But as a priority, it doesn't
21 seem we ought to be identifying as part of the hierarchy
22 people who have certified compliance. It seems to me they
23 would be part of the random process and go back in the
24 pool with everybody else.

25 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: This is

1 Bill.

2 In looking at the regs prior to this workshop,
3 one of the areas that we're going clarify is that the
4 random selection process would apply -- it's not really a
5 separate criteria. It's not a separate listing. It's
6 basically for those last two groupings. The new companies
7 and the previously identified companies, the random
8 selection process would be used for those companies. So
9 it's not really a lower rung on the hierarchy. We'll make
10 sure that's clear.

11 BOARD ADVISOR PECK: That works.

12 MR. POLLACK: Randy Pollack.

13 I just want to mention -- I know you use the word
14 "may" here. One of my concerns is if there's a company
15 that's not compliant, they may be assessed a fine of
16 \$20,000 or whatever it is. More than likely, they're not
17 going to be compliant the following year. They're going
18 to be caught under this basically saying they're going to
19 be in the next cycle also.

20 I'm not sure how to address it, because they may
21 be trying to address the issue down the line. But the
22 next year may not be the one where they're going to be in
23 compliance. But they're number one up that they will be
24 included. And hopefully with the word "may" the Board has
25 the ability whether are to choose them or not. Just one

1 consideration.

2 MR. LARSON: George Larson again. I know this is
3 going nowhere, but I will say it anyway.

4 You used to have a very fair, equitable -- and
5 I'll just say it -- a process that caused more compliance
6 than anything I've seen in this. And that was the
7 compliance order. You got rid of it. Under the
8 compliance order, of course, the company had to sign a
9 legal document negotiated with your Legal Office to take
10 specific actions within a certain period of time to get
11 them into compliance. And then failure to be in
12 compliance under the compliance option would bring upon
13 those companies the enforcement.

14 I don't know why that ever went away. Now you
15 have this schedule on page 57 where -- I don't know. I
16 just made the number up of the page. You go back and you
17 go to column one. You read the violation. You move two
18 columns over. The number of containers, and the final
19 column on the list on the right is the fine.

20 To me, that doesn't -- the one size fits all
21 doesn't fit. And if we're trying, and I think you are in
22 spirit it and the intent of the law to bring about
23 compliance, having a compliance order and working with the
24 companies is the best way to achieve that.

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: Okay. You know, the Board does have prosecutorial
2 discretion in pursuing enforcement. And the calculated
3 penalty may not end up being the penalty that's assessed.

4 And whether we call them compliance agreements or
5 settlement agreements, I think the Board has a discretion
6 to negotiate those with product manufacturers that are out
7 of compliance with the law. And the terms of those
8 agreements, I think it's a case by case determination
9 where we will take into account the particular
10 circumstances with each company.

11 On the previous compliance agreements, I think
12 they were the appropriate tool for that place and time,
13 and the progress that we've made at that time in regard to
14 enforcing the law.

15 I think we're in a different place now in regard
16 to enforcement. And I think there's greater expectations
17 at this point. But again, certainly I think the Board
18 does have the discretion to negotiate settlement
19 agreements taking each company's conditions into account.

20 MS. LIVINGSTON: Mike, Carol Livingston.

21 Where does it show the Board discretion? Because
22 that was a concern of mine that it was sort of lock step
23 assignment, lock step fines. Where is the language that
24 gives the Board discretion to do less or do no fine?

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: Well, in the section on violations and penalties,
2 we do list factors for modifying penalties. But, you
3 know, the Board's discretion about what enforcement
4 actions it wants to take, that's not something that we
5 would necessarily spell out in the regulations.

6 MS. LIVINGSTON: Well, then I think it should be
7 added there be the possibility for no fine. Because I
8 have heard in other -- not from this Board, but from other
9 boards well, you know, there is the fine, that's what it
10 is. Even though you have circumstances where you can
11 reduce, you can't reduce because you charge one person --
12 because you've charged one company this fine, you've got
13 to charge them all this fine.

14 And it's difficult to get any consideration for
15 circumstances. It might dictate something different. And
16 I would hate to see this Board operate like that, because
17 there are circumstances that should be taken into
18 consideration.

19 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
20 LEAON: And I understand your concern there. And the way
21 the process is set up currently, the Board delegates its
22 authority to the Executive Directive to sign off on
23 settlement agreements or compliance agreements. And it's
24 our objective to reach a settlement with a company.

25 But failing that, the process calls for an

1 administrative hearing before it and an administrative law
2 judge. The ALJ will issue a decision. And that decision
3 comes back to Board for ratification. And I think the
4 Board has discretionary authority to either ratify that
5 decision or, of course, set it aside. And I think our
6 staff counsel will add to that.

7 STAFF COUNSEL DYSON: This is Tamara Dyson, staff
8 counsel with the Waste Management Board.

9 Implicit in the concept of the Board and
10 everything that it does is discretion to not do anything
11 at all. Not to have any kind of fine. That's implicit.
12 And it doesn't need to be spelled out in every single
13 regulation that they don't have to do it. Just like with
14 the ALJ. They can decide not to -- or a judge. They can
15 just decide not to do any fine at all.

16 And you want the Board to have that discretion,
17 because that allows you more flexibility to bring matters
18 to the Board. You don't want to have everything spelled
19 out. You don't want to put the Board in a straightjacket
20 that way.

21 MS. LIVINGSTON: Well, I would agree with that.
22 And that's exactly why I think it should be explicit that
23 no fine is permissible, rather simply that fines can be
24 reduced. I think it should be explicit that no fine is an
25 option.

1 STAFF COUNSEL DYSON: This is Tamara Dyson again.

2 I don't think there's anything in the regulation
3 that requires the Board to have a fine or not have a fine.
4 This chart is just to give an indication of what's
5 available and what they can do. The Board can always
6 choose not to do any fine and have a lot of flexibility in
7 the settlement/compliance agreements. And they work with
8 each individual manufacturer.

9 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

10 LEAON: Again, the section on violations and penalties
11 does include the factors to be considered and modifying
12 penalties. But again, as Tamara was saying, that penalty
13 calculations that are provided in the regulations provide
14 guidance to the Board, based on the violation, this is the
15 penalty that the product manufacturer would be subject to.
16 But again, the Board does have the discretion to not take
17 enforcement actions.

18 MR. LARSON: Mike, George Larson.

19 I have asked this question before, and I just
20 need reassurance. It's a process question.

21 If through the certification process a company is
22 found not to be in compliance with the law and the terms
23 and conditions under which they fail to meet compliance
24 have been identified volumetrically or other otherwise and
25 you use that chart, if you will, for what an associated

1 fine may be, process-wise I'm asking would you contact a
2 company first and say, "We found you not in compliance
3 under these particular requirements, which is subject to
4 this potential fine, and we'd like to discuss any
5 mitigating circumstances"? Or if you go out in a public
6 document in a public forum and say, "Here's what the fine
7 is, talk me down from here."

8 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

9 LEAON: Good question, George. You know, what we will do
10 is provide a notice to non-compliant manufacturers. We
11 reviewed your certification. We've determined based on
12 information you've submitted, you're non-compliant in
13 these areas. These are the violations. These are the
14 penalties that we've calculated.

15 And at that point, you know, we would want to
16 come to some sort of agreement with that product
17 manufacturer about bringing them into compliance.

18 So no, we wouldn't go directly to a Board meeting
19 or some other public process. It would be a negotiation
20 with the individual product manufacturer.

21 Okay. We've kind of jumped ahead and talked
22 about violations and penalties. The next major change to
23 the regulations --

24 --o0o--

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: -- that I would like to discuss today are the
2 appeal process for container determinations. Unless we
3 have more questions on the selection and notification
4 process, I would like to move on to that discussion. Any
5 more questions on selection and notification?

6 I should say there's quite a bit of material
7 between the process and the container determinations. But
8 the bulk of that material has been revised, reformatted
9 those sections to make it more clear.

10 I can just read off the section as we thumb
11 through this. And if anybody has a specific questions
12 they want to stop and ask about for that section, we can
13 do that.

14 On page 25, it's a product manufacturer's
15 certification form and subsequent sections. And this
16 details the information that a product manufacturer has to
17 provide for various compliance options for its containers.

18 And that runs through page 33, which would bring
19 us to Section 17945.4, which is container manufacturers
20 certification information.

21 MR. MCANANY: This Jack Mcanay.

22 I just have one brief comment on that section. I
23 notice that you're still asking for the container
24 manufacturers to provide the number of containers
25 supplied. And I think we talked at the last meeting that

1 that number isn't always going -- in fact will rarely
2 reconcile with the number of product containers sold. And
3 it just introduces some ambiguity and ultimately at the
4 end of the day the number that I don't think is really
5 ever used.

6 So the suggestion would be just from the
7 standpoint of kind of eliminating unnecessary work, to
8 make that requirement that be part of the information from
9 the container manufacturer.

10 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

11 LEAON: This is page 34?

12 MR. MCANENY: Yeah

13 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

14 LEAON: Which paragraph?

15 MR. MCANENY: It would be paragraph C. And
16 you're asking for in sub-bullet one the number of each
17 item or type. You need clearly the information on the
18 weight and which container it is and weight of that
19 container. But the information that's important for
20 determining compliance is ultimately the number that we
21 sell as the product manufacturer.

22 So I'm just basing this on practical experience
23 where I know our container manufacturers went to the lot
24 of effort to track down numbers supplied, but really that
25 data was never utilized.

1 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
2 LEAON: Let me ask a clarifying question of staff. I
3 believe the intent here was for the container manufacturer
4 to provide that information only on the container lines
5 that it's supplying to a product manufacturer, not all of
6 the containers that they manufacturer. Is that how you're
7 looking at it, Jack.

8 MR. MCANENY: No. I guess from a process flow
9 standpoint, this seems to be asking exactly what you said,
10 a container manufacturer to provide the number of
11 containers it sold to the product manufacturer. My point
12 is that that number is not going to line up with the
13 number of containers that we sold for the year that you
14 were asking to certify compliance. Therefore, that data
15 is never really utilized. And if we were building an
16 inventory, getting ready for a product launch, or seasonal
17 type of application, the number of containers they supply
18 to us isn't going to line up with the number of containers
19 that we ultimately sell.

20 I know Gerry Claes at one point was on the line.
21 He might be able to speak from a container manufacturer
22 perspective.

23 But in my opinion, that's just a number that
24 ultimately never gets utilized and recommends work and
25 efforts of folks trying to run down and introduces an

1 inconsistency that can easily be explained away. But if
2 there's not a need for it, I would propose deleting that
3 requirement. Minor point, but one I wanted to flag.

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

5 LEAON: Okay. I guess my concern on that point would be
6 the product manufacturer is going to need that information
7 from its container manufacturer to verify compliance with
8 the law.

9 MR. MCANENY: Well, you certainly need to
10 understand the number of product containers that we sold
11 for a particular calendar year.

12 My point is that the number --

13 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

14 LEAON: I did want to clarify on the one point, Jack. I
15 think you say we're asking a container manufacturer to
16 certify, we would never ask a container manufacturer to
17 certify. We only ask the product manufacturer to certify,
18 and that the container manufacturer provide the product
19 manufacturer with the necessary data for the product
20 manufacturer to demonstrate compliance based on those
21 container lines, whether they're source reduced, have
22 postconsumer material content.

23 MR. MCANANY: Absolutely.

24 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

25 LEAON: So was your concern that we would ask a container

1 manufacturer to demonstrate individual compliance for all
2 of its containers?

3 MR. MCANENY: No. The point I'm trying to raise
4 is that you would ask Proctor and Gamble to provide their
5 compliance for calendar year 2007. You would rely upon
6 our container manufacturers via to give the certification
7 form they fill out to specify the weight of the container,
8 PCR content of the container and source reduction with the
9 other critical data. The information that we then provide
10 in the sales data for the product that was regulated.

11 The number of units that we sell for 2007 doesn't
12 necessarily reconcile with the number of containers they
13 may provide us during the same period, because our
14 production process may build inventories ahead of time.
15 We may built -- order from them ahead of time, inventory
16 in terms of containers.

17 So this is a minor point and probably spending
18 too much time on. My point was simply having gone through
19 the certification exercise, it just struck that having the
20 container manufacturers provide the number of containers
21 they supply to us didn't really factor into our overall
22 compliance determination process, because it's really the
23 number of containers sold during the calendar year. And
24 if I'm not making sense, I'd be happy to work off line.

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: Maybe we can do that. And if you have some
2 thoughts on alternative language, I would certainly like
3 to follow up with you on that.

4 Okay. Thank you. The next section 17945.5,
5 compliance calculations formulas on page 34, these provide
6 the calculations needed to determine compliance for
7 container lines based on the various compliance options.
8 We had some comments on somebody caught an error in one of
9 the formulas. I believe we've addressed that.

10 Are there any other questions or comments on the
11 compliance calculations?

12 MS. WRECKER: Can you hear me? I have a question
13 about -- general about the long life packaging, whether
14 it --

15 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

16 LEAON: Could you identify yourself?

17 MS. WRECKER: Yeah. I'm Marcie Wrecker with EPI.

18 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

19 LEAON: Speak louder.

20 MS. WRECKER: I was just questioning, because I
21 was looking through the calculations. And I don't see any
22 certification on how long life packaging is going to be
23 addressed. Is that something that's going to be clarified
24 in the regulation? If not, like we have some
25 determinations from you regarding like drill cases,

1 drills, drill bits, DVD cases. Are those determinations
2 going to be affected by these new changes?

3 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

4 LEAON: I think your question goes more towards whether
5 the container is an RPPC.

6 MS. WRECKER: Well, if they're holding eight
7 ounces -- and currently like we have some determinations
8 that say they're exempt from the RPPC regulations because
9 they're long life packaging and they go with the product.
10 And I was under the understanding --

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

12 LEAON: Right. Well, that wouldn't be spelled out in the
13 compliance calculations here.

14 MS. WRECKER: I was having trouble getting
15 through earlier. I apologize if you already addressed it
16 and I missed it.

17 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

18 LEAON: Right. If I understand correctly, I think your
19 question goes to whether that particular package would be
20 a regulated RPPC. And in previous certification -- let me
21 clarify. Is that what your question is? If you have a
22 product that is sold with a durable case that's intended
23 to stay with that product, for instance, a drill, is that
24 case an RPPC? Is that what you're trying to determine?

25 MS. WRECKER: I'm trying to determine if these

1 regulations will affect that.

2 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

3 LEAON: If you could speak up a little louder and directly
4 into your phone. We're having a hard time hearing you.

5 MS. WRECKER: I'm speaking as loud as I can. I'm
6 having some phone issues.

7 Yes. That's the question I'm asking. I was
8 wondering if these regulations would impact -- I mean
9 changes would impact those determinations that we
10 previously had gotten for DVD cases and for drill cases.

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

12 LEAON: Okay. Yeah. I think moving forward with the
13 certification, what we'll do in making those container
14 determinations is simply apply the definition of an RPPC.
15 In previous certifications, we had given consideration to
16 cases that were intended to permanently store the product
17 and had not enforced against those as being RPPCs.

18 Moving forward however, I think it's likely that
19 we will be including those as RPPCs simply because we
20 think that they fit the definition. And it's appropriate
21 to regulate that type of case. And in addition, those
22 durable cases are actually very good use for postconsumer
23 materials.

24 MS. WRECKER: Thank you for that answer.

25 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

1 LEAON: Okay. So on the compliance calculations, are
2 there any questions on the calculations?

3 MR. POLLACK: Excuse me, Mike. Randy Pollack.

4 I just jump back to the container determinations.
5 Just reading through it, the last couple of bullets 1, 2,
6 3, 4, talking about the appeal to the Executive Directive,
7 is there a step back after that to go to the Board?

8 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

9 LEAON: You're getting ahead of me.

10 MR. POLLACK: Oh, I was looking at the -- I'm
11 sorry.

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

13 LEAON: I was trying to -- hold that thought. I just want
14 to make sure that we don't have any questions on the
15 compliance calculations before we move on.

16 Okay. Doesn't sound like we have any questions
17 on the compliance calculations. And actually we have
18 waivers and exemptions. We can come back to that. Why
19 don't we go ahead and go to --

20 BOARD ADVISOR PECK: Mike, if I might. Chris
21 Peck.

22 I was out of the room for a couple of minutes. I
23 just want to go back when we were talking about the
24 compliance options. This is just a language issue. We
25 use repeatedly the term "compliance period" in that

1 section. We define "measurement period" in the
2 definitions. And at least one other place we use the
3 phrase "certification period." I don't know if we're
4 using those things interchangeably, but it made me look
5 back and forth at definitions to see what was there. And
6 I'm just thinking that consistency is probably a good
7 thing here.

8 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

9 LEAON: I would agree with that, and we'll look at fixing
10 that. We definitely want to be consistent.

11 Thank you, Chris. Okay.

12 Don't let me forget about waivers and exemptions,
13 but we can go ahead and talk about container
14 determinations.

15 MR. POLLACK: We can start with exemptions. I
16 had an issue on that too.

17 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

18 LEAON: All right. That's next in sequence. So let me
19 turn back to that section.

20 Okay. Section 17946, newly introduced product or
21 package waivers beginning on page 45 of your packet.

22 Do we have any questions on the waivers, or is it
23 on the exemptions? Okay. Any comments or questions on
24 waivers?

25 The change we made there is we added under the

1 compliance options that if you ask for a waiver or if a
2 company asks for a waiver for the PCM requirements, it
3 still needs to comply through another option.

4 Exemptions, and before you start with that --

5 MS. LIVINGSTON: Mike, Carol Livingston.

6 On that Section A where it says the Board "may"
7 grant waiver, doesn't the statute require a waiver under
8 those circumstances? Shouldn't that be a "shall"?

9 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

10 LEAON: Let me look at the statutory language.

11 MS. LIVINGSTON: 42330 and 310.

12 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

13 LEAON: And the statutory language says the Board shall
14 grant a waiver to postconsumer material contents. We'll
15 look at that. I think that's probably correct. I just
16 want to make sure. And we'll work with staff counsel on
17 that question that we're not removing any discretion the
18 Board should have. But I think that is correct, it should
19 say "shall."

20 Okay. One of the issues on waivers which
21 unfortunately we failed to address in this packet, we did
22 want to clarify that the additional documentation
23 requirements for an exemption based on FIFRA and DOT
24 hazardous material as shipping restrictions don't apply to
25 the food, cosmetics, and pharmaceutical statutory

1 exemptions. So we'll make sure we get that fixed in the
2 next version. And with that -- okay.

3 MR. POLLACK: Randy Pollack.

4 That was my thing. Looking at under exemptions
5 number B about listing your containers, so you've just
6 clarified that, for example, this is on page 47.

7 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

8 LEAON: Yes.

9 MR. POLLACK: So you're saying that's just
10 applying to the FIFRA about your containers.

11 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

12 LEAON: Yes.

13 MR. POLLACK: Perfect. Thank you.

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

15 LEAON: Okay. The next section would be 17948, which is
16 proprietary, confidential, or trade secret information.
17 We included information in here about how the Board
18 handles claims of confidentiality. We felt we should
19 spell that process out and adhere to the -- maybe I'll ask
20 Tamara to bail me out here. But we follow the direction
21 of -- what's the citation? They'll be subject to the
22 Disclosure Provisions in Section 17041 of this title.

23 Okay. Any questions on that?

24 And turning to page 52, Section 17948.1,
25 retention of records. We've reduced the recordkeeping

1 requirement from four to three years.

2 And that brings us to 17940.2, container
3 determinations. And this is a new process in the
4 regulations. And we do want to be responsive to product
5 manufacturer concerns regarding staff determinations about
6 whether an RPPC is, in fact, regulated. We didn't have an
7 appeal process built into the regulations. And we're
8 going to include that in the revised regulations.

9 And the way we've set it up is if a product
10 manufacturer disagrees with staff's determination that a
11 container is an RPPC, it can appeal that determination to
12 the Executive Directive. And at that point, if the
13 Executive Directive should determine that it is an RPPC,
14 the process would then pick up from how it's spelled out
15 in existing regulation that the product manufacturer could
16 ask for a hearing by the ALJ. The ALJ issues a decision.
17 And then it comes back to the Board for ratification.

18 So with that, I'll open it up.

19 MR. POLLACK: Mike, Randy Pollack.

20 So I guess you answered my question. Once the
21 Executive Directive makes a determination, then if you do
22 not agree with that, you would go to administrative law
23 judge and not to the Board itself.

24 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

25 LEAON: Yes. That's correct.

1 MR. POLLACK: The Board will not have any
2 opportunity of either adopting or supporting the Executive
3 Director's until after administrative law judge?

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
5 LEAON: That's the way we've set the process up currently.
6 And I think from a practical standpoint, taking several
7 container issues to the Board from our viewpoint is not
8 the most desirable process. And I think the process
9 that's laid out in the statute is the preferred option in
10 allowing the Board to ratify a decision by the ALJ.

11 MR. LARSON: George Larson, Mike.

12 Under Section 17948.2, the container
13 determinations, you include under Subsection 2 that if the
14 appeal is not received within 30 days and the staff's
15 decision is final, I would say for equity and parody that
16 if the Board does not respond to the written request from
17 the product manufacturer utilizing the container in
18 question that it be deemed not an RPPC in the absence of a
19 determination otherwise.

20 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
21 LEAON: Well, I can certainly understand where you're
22 coming from, George. But if we were to include that, you
23 know, I think we would be as a matter of operation of law
24 cutting out or cutting short the process and really taking
25 away the Board's authority through that.

1 So on that basis, I don't think that's a change
2 that we can support. Though, you know, I fully understand
3 your desire to get a timely response from staff on that
4 issue.

5 MR. LARSON: That sort of leaves it open ended
6 for you. But the respondents or those wishing to make an
7 appeal who don't meet your time lines -- or perhaps you
8 can delete the provision that limits the days upon which
9 an appeal can be made.

10 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
11 LEAON: Well, perhaps we can talk about perhaps providing
12 some additional time to allow the manufacturer to respond.
13 But you know, I think once the Board makes a determination
14 and notifies the product manufacturer, we definitely want
15 a timely response and not leave it open ended. We have
16 had challenges getting responses from product
17 manufacturers in the past when there's no deadline
18 associated with that response.

19 RECYCLING TECHNOLOGY BRANCH MANAGER ORR: This is
20 Bill Orr.

21 Just one other thing. There's sort of a
22 difference between requesting a determination and going
23 through whatever process might be required to resolve the
24 determination. So I really don't think the Board would
25 want to have its hands tied, because there may be some

1 very complex issues associated with it.

2 So I think if you're saying, well, you want to
3 hear something back from us to find out whether maybe that
4 request is complete or something, then we can maybe commit
5 to a specific time frame. But it's really difficult I
6 think looking at it to say that we'll have all the facts
7 that we need and be able to render a decision in all cases
8 within 30 days.

9 If there is more reasonable time in terms of a
10 time period to request a certification, I think we are
11 open to it. But I just don't think the Board wants to tie
12 its hands not knowing what those circumstances might be in
13 the future. And I think it's more complicated than simply
14 requesting a determination.

15 MS. LIVINGSTON: Carol Livingston.

16 But I think in order make the process clearer, if
17 there is an appeal to the Board, a failure to respond by
18 the Board should not be the same as a determination. A
19 response should be required. And absent a response,
20 there's no RPPC determination, no matter how long it
21 takes.

22 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR

23 LEAON: Well, I think we can consider that request
24 further, and we'll take another look at that.

25 MR. POLLACK: Mike, Randy Pollack.

1 I was going to mention one other thing you might
2 want to also take a look at and clarify it a little bit.
3 Under E, on page 33, it says failure to include any other
4 required information shall be grounds for rejection of the
5 appeal.

6 And when you look above it, I think some of it is
7 sort of blurry as to what that would include. You may
8 want to take another look at that. For example, if you
9 don't provide additional documentation --

10 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
11 LEAON: Let me interject. I hate to do this to everybody,
12 but we will have to switch rooms. 12:30, correct?

13 MR. BERUMAN: We have this room until now.

14 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
15 LEAON: Well, let me just ask, do we want to reconvene at
16 1:30 or I can certainly take comments individually.
17 Because the only other section we need to get through is
18 violations and penalties. Let me ask if there's a
19 preference to reconvene at 1:30, or should we address
20 additional comments individually?

21 MR. BERUMAN: We wouldn't have internet in the
22 room, but we have the phone.

23 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
24 LEAON: Especially for you folks on the phone is there any
25 preference? Folks?

1 MR. MCANENY: This is Jack Mcaneny. I'm going to
2 have to sign off anyway. So appreciate the opportunity to
3 comment.

4 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
5 LEAON: All right. Thank you, Jack.

6 Anyone else on the phone?

7 MR. O'GRADY: I have no preference. This is Bill
8 O'Grady.

9 PLASTICS RECYCLING TECHNOLOGY SECTION SUPERVISOR
10 LEAON: Okay. All right. Well, I think in that case what
11 we can, do we can meet individually and take additional
12 comments on a one on one basis. But we appreciate
13 everyone's participation. And let's adjourn the meeting.
14 And we will not be reconvening at 1:30.

15 (Thereupon the California Integrated Waste
16 Management Board Rigid Plastic Packaging
17 Container Informal Rulemaking Process Advisory
18 Group adjourned at 12:30 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 6th day July, 2007.

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22 TIFFANY C. KRAFT, CSR, RPR

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